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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 CHRISTIAN RODRIGUEZ,
17 ALBERTO CAZAREZ, individually
and as class representatives

18 *Plaintiffs,*

19 vs.

20 CITY OF LOS ANGELES, CARMEN
21 TRUTANICH, CHARLES BECK,
ALLAN NADIR, ANGEL GOMEZ
22 AND DOES 1 THROUGH 10.

23 *Defendants.*

) Case No.: CV11-01135 DMG (JEMx)

) [Assigned to the Honorable Dolly M.
Gee – Courtroom 7]

) **COMPENDIUM OF EVIDENCE IN**
) **SUPPORT OF PLAINTIFFS’**
) **MOTION FOR ATTORNEY FEES**

) **[VOLUME 4 OF 5]**

) DATE: December 2, 2016
) TIME: 2:00 p.m.
) CRTRM: 7

) *[Filed concurrently herewith: 1) Pltfs’*
) *Mtn for Attorney’s Fees; 2) Ntc of*
) *Lodging; and, 3) [Proposed] Order]*

) Complaint Filed: February 7, 2011

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

P.C., et al.,
Plaintiffs,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

No. CV 07-3413-PLA
consolidated with

S.G.P., et al.,
Plaintiffs,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

No. CV 07-6495-PLA

P.C., et al.,
Plaintiffs,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

No. CV 09-842-PLA
**ORDER RE MOTIONS FOR ATTORNEYS
FEES AND COSTS**

1 On March 15, 2012, following a jury trial, a verdict in this civil rights action was returned in
2 favor of plaintiffs and against six of the original ten named defendants.¹ The jury concluded that
3 two defendants had used excessive force or failed to intervene in the use of excessive force
4 against decedent, and that the excessive force was a substantial factor in his death; that six
5 defendants (including the aforementioned two defendants) unreasonably denied medical care to
6 decedent while he was in their custody and were negligent toward decedent; and that punitive
7 damages against three of those six defendants were justified. On March 19, 2012, following a
8 damages phase, the jury awarded damages of \$870,000 to decedent's estate, \$1,500,000 to
9 plaintiff P.C., \$400,000 to plaintiff S.G.P., \$400,000 to plaintiff E.E., and punitive damages against
10 defendant Meneses (\$20,000), defendant Silva (\$10,000) and defendant Arellano (\$15,000).
11 Plaintiffs have now filed two Motions for Attorneys Fees in which they seek: (1) attorneys fees
12 pursuant to Fed.R.Civ.P. 54(d) and 42 U.S.C. § 1988 in the sum of \$791,883.50, as well as costs,
13 as to attorneys Dale Galipo, Humberto Guizar, Hilary Rau, and John Fattahi (the "First Motion");
14 and (2) attorneys fees in the sum of \$49,282.50 as to attorney James P. Segall-Gutierrez (the
15 "Second Motion"). Defendants have filed oppositions to both Motions, and Replies were filed to
16 both the First Motion and the Second Motion. The Court has reviewed the documents submitted
17 by the parties in connection with the Motions, and has considered the arguments presented by
18 counsel at the hearing on September 12, 2012.

19 There is no dispute that plaintiffs are considered the prevailing parties in this action under
20 § 1988. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); see Defendants' Opposition to First
21 Motion, at 4 ("plaintiffs are the prevailing party for purpose of awarding *reasonable* attorneys' fees
22 and costs with respect to Officers Meneses, Silva, Flores, Chavez, Arellano and Vargas")
23 (emphasis in original). "The purpose of § 1988 is to ensure 'effective access to the judicial
24 process' for persons with civil rights grievances. Accordingly, a prevailing plaintiff 'should
25 ordinarily recover an attorney's fee unless special circumstances would render such an award
26 unjust.'" Hensley, 461 U.S. at 429 (citations omitted). The applicant bears the burden of showing

27
28 ¹ One defendant was dismissed at the start of trial, and the jury did not find liability as to three defendants.

1 an entitlement to an award and of documenting the hours expended and hourly rates (id. at 437);
2 the opposing party then “has a burden of rebuttal that requires submission of evidence to the
3 district court challenging the accuracy and reasonableness of the hours charged or the facts
4 asserted by the prevailing party in its submitted affidavits.” Gates v. Gomez, 60 F.3d 525, 534-35
5 (9th Cir. 1995). The question in these Motions is whether the requested amounts are reasonable
6 under the statute. Plaintiffs contend that they are entitled to the requested fees, based on the
7 nature of the case, the experience of counsel, the work involved, and the outcome of the trial.
8 Defendants disagree, arguing that counsels’ billing statements are too vague, counsel billed for
9 improper activities and duplicative tasks, counsel seeks excessive amounts for an excessive
10 number of attorneys, and the hourly rates sought are excessive.

11 The Court examines the “lodestar” in determining whether the requested fees are
12 reasonable. The lodestar is obtained, first, by multiplying the number of hours reasonably
13 expended on the litigation by a reasonable hourly rate. Hensley, 461 U.S. at 433-34. Those hours
14 that were not reasonably expended (such as when a case is overstaffed, or based on varying skills
15 of the lawyers involved, or that are excessive or redundant) should be excluded. Id. A reasonable
16 hourly rate under § 1988 is determined “according to the prevailing market rates in the relevant
17 community, regardless of whether plaintiff is represented by private or nonprofit counsel.” Blum
18 v. Stenson, 465 U.S. 886, 895 (1984).

19 The factors that may be considered in reaching a lodestar value and possible adjustment
20 are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the
21 skill requisite to perform the legal service properly; (4) the preclusion of other employment by the
22 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or
23 contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved
24 and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the
25 undesirability of the case; (11) the nature and length of the professional relationship with the client;
26 and (12) awards in similar cases. Hensley, 461 U.S. at 430 n.3.

27 Here, plaintiffs seek an award of fees of \$791,883.50 in the First Motion based on the work
28 of four attorneys. They assert that as of the filing of the First Motion, Mr. Galipo had spent 780.4

1 hours working on this case, and that a reasonable hourly rate is \$700; that Mr. Guizar worked
2 358.5 hours, at a reasonable hourly rate of \$500; that Hilary L. Rau worked 89.1 hours, at a
3 reasonable hourly rate of \$285; and that John C. Fattahi worked 102.4 hours, at a reasonable
4 hourly rate of \$400. In the Second Motion, attorney James P. Segall-Gutierrez represents that he
5 worked 141 hours, at a reasonable hourly rate of \$350, for a total of \$49,350.² In support of these
6 numbers, plaintiffs have submitted declarations from each attorney setting forth his or her legal
7 experience, including in civil rights litigation, and their time records from this case. As for Mr.
8 Galipo and Mr. Guizar, civil rights litigation is their area of expertise. Mr. Galipo and Mr. Guizar
9 have also submitted declarations from attorneys not associated with this case setting forth their
10 opinions as to the skills of these two lawyers, the prevailing hourly rates for attorneys with similar
11 experience and skills, and the reasonableness of the hourly amounts sought by Mr. Galipo and
12 Mr. Guizar.³ Plaintiffs seek an additional \$4,845 (17 hours of work by Ms. Rau at \$285 per hour)
13 for time spent drafting their Reply to the First Motion, and for work performed opposing
14 defendants' Motion for New Trial.

15 In opposition, defendants argue that plaintiffs' counsel's billing statements are too vague,
16 and that counsel billed for improper activities, duplicative tasks, excessive amounts and attorneys,
17 and at excessive rates. In particular, counsel contends that Mr. Galipo rarely appeared in Court
18 prior to the final pretrial conferences, and when he did appear he represented that he was not
19 familiar with the case at that point; and that when Mr. Guizar would appear on behalf of plaintiff
20 E.E., he "rarely had any idea as to how to move the case forward." Defendants assert that this
21 was a "relatively straight forward case of excessive force," that the amount sought in the Motions
22 is "extraordinary," and that four of the original officers accused in this action were either dismissed
23 or not found liable by the jury. Examining each of the four attorneys in the First Motion,
24

25 ² While Mr. Segall-Gutierrez indicates that he worked a total of 141 hours at a rate of \$350
26 per hour (which works out to \$49,350) (Second Motion, at 6), he seeks a slightly lower recovery
of \$49,282.50. Second Motion, at 6, 8.

27 ³ One of the declarations attached to Mr. Guizar's declaration indicates Mr. Guizar is seeking a
28 fee based on \$600 per hour (not the \$500 per hour rate actually being sought), and that the \$600
per hour amount is reasonable. See Guizar Declaration, Ex. D.

1 defendants contend among other things that courts have been reluctant to award a rate as high
2 as that sought by Mr. Galipo even to attorneys with comparable experience; that he was playing
3 catch-up as the trial progressed; that it is “unbelievable” he passed up taking on other cases while
4 handling this matter given his busy schedule; that he and other counsel relied on defendants’
5 exhibits as they were better organized; and that he was never available to discuss the case with
6 opposing counsel. As for Mr. Guizar, defense counsel argues that his assertions concerning the
7 number of successful jury trials he has handled are unsupported; that his contribution to this trial
8 was minimal, he did not take part in any hearings regarding legal issues, and he did not ask
9 meaningful questions even when he did appear at depositions; and that he was ill-informed about
10 the status of the case, and in essence acted as an assistant to Mr. Galipo. Defendants next argue
11 that Mr. Fattahi’s billing rate at his former firm has no correlation to the type of work he did on this
12 case.⁴ Although defendants agree that he did most of the work on this case prior to trial, he is a
13 third year attorney with minimal police litigation experience, and his duties -- including outlining
14 issues for Mr. Galipo for depositions -- were comparable to those of a paralegal. Finally, Ms. Rau
15 had only a year of experience as an attorney when this case went to trial, and she was only
16 minimally involved.

17 Defendants further argue that although three separate lawsuits were involved in this
18 consolidated action, they all involved the same allegations and officers arising from the same
19 incident. Defendants were able to handle the case with one attorney alone; multiple attorneys
20 were not necessary for plaintiffs. Similarly, multiple attorneys attended conferences, depositions,
21 and hearings, often doing the same work. For example, Mr. Guizar attended depositions where
22 he asked only a few questions, which were all objectionable, and billed for all of his time in trial
23 even though he played only a minor role.

24 Defendants in the First Motion also present a challenge to the number of hours spent on
25 specific billing entries for Mr. Galipo and Mr. Guizar, and more general challenges as to the other
26

27 ⁴ Attached to Mr. Fattahi’s declaration is a declaration from a partner at the firm where Mr.
28 Fattahi was an associate prior to going to work for Mr. Galipo. Mr. Fattahi’s billing rate for paying
clients in business litigation matters was \$365 per hour.

1 two counsel. Citing specific examples (Opposition to First Motion, at 9-12), defense counsel
2 contends in part that Mr. Galipo and Mr. Guizar are padding their hours; that fees should not be
3 allowed for time spent by multiple attorneys attending the same hearings and depositions or for
4 reviewing a case with another attorney involved in the same matter; that Mr. Guizar is guilty of
5 “truly excessive billing,” and his fee request is unreasonable given that his time was essentially
6 spent “occupying a chair in court;” and that counsel is asking for compensation for deposition time
7 above and beyond the length of the actual deposition. Next, counsel points out that Mr. Fattahi
8 billed for many of the same items for which Mr. Galipo billed, including depositions, the review of
9 reports and documents, and attending court conferences. He also prepared and reviewed
10 documents even though Mr. Galipo and Mr. Guizar billed for the same items, and billed at an
11 attorney rate for correspondence that could have been handled by a law clerk. Finally, Ms. Rau’s
12 contribution to the case was minimal, and her hours were duplicative, excessive and unnecessary.

13 Accordingly, defendants believe the hourly rate for each attorney in the First Motion should
14 be reduced, that a reasonable number of hours is 200 hours for Mr. Galipo, 75 hours for Mr.
15 Guizar, 51.2 hours for Mr. Fattahi, and no hours for Ms. Rau. They also seek a downward
16 adjustment of the lodestar amount by 40% based on the fact that plaintiffs did not prevail as to four
17 of the original ten defendants.

18 As to Mr. Segall-Gutierrez, defendants argue that he was only marginally involved in this
19 case “until he abandoned it completely;” he did not appear at trial or at most depositions, did not
20 generate pleadings or participate in negotiations, and did not discuss the case with opposing
21 counsel. Defendants further contend that he was not permitted to appear to represent plaintiff
22 E.E. in court; never discussed settlement with defense counsel (although he asserts that “plaintiffs’
23 counsel” made efforts to settle the case); spent no time in trial; completely misrepresented a prior
24 matter he claims to have settled for \$25.5 million (and in fact abandoned his clients in that case,
25 who received only a small portion of the over-all settlement, and that he had nothing to do with the
26 settlement); misrepresented the nature of another case he settled; had nothing to do with the
27 ultimate verdict in this action; and had minimal participation at most at the five depositions at which
28 he appeared. Defendant thus contends that Mr. Segall-Gutierrez should not be awarded any fees.

1 As to the hours he claims, defendants argue that the time he spent reviewing pleadings and work
2 generated by other attorneys involved nothing generated by him, and his skill and experience lent
3 nothing to this case. Defendants list several examples of entries that, they submit, show that Mr.
4 Segall-Gutierrez “is attempting to piggy-back his bill on the work of Mr. Galipo, and dip his hand
5 into the treasury of the City of Los Angeles for legal work that he had nothing to do with.”
6 Opposition to Second Motion, at 9-11.

7 After considering the pleadings of the parties and declarations filed in support of their
8 positions, and the oral argument of counsel, the Court accepts the rates of the four attorneys in
9 the First Motion as falling within the prevailing market rate. Here, plaintiffs have submitted
10 evidence that the rates sought by Mr. Galipo and Mr. Guizar are appropriate for attorneys of
11 comparable skill, experience, and reputation. The rates established in the case L.H. v.
12 Schwarzenegger, 645 F.Supp.2d 888, 894 (E.D. Cal. 2009), for San Francisco are appropriate to
13 utilize as reflective of the market rates in a large California city. The Court notes that those rates
14 are now a few years old, but the rates sought here are still within those set forth in L.H. See First
15 Motion, at 6. When added to the declarations of outside attorneys attesting to the propriety of the
16 requested rates, the Court will not deviate from those amounts as to Mr. Galipo and Mr. Guizar.
17 As to Mr. Fattahi, however, the Court observes that at the time he started working on this case,
18 he had only a few months experience in the area of civil rights litigation, and had less than two
19 years of such experience when he ceased his work on this case. His **current** billing rate at his
20 own firm, after six years as an attorney and three years specializing in civil rights litigation, is \$400
21 per hour. The Court thus finds it appropriate to cut his requested rate by 20%, to \$320 per hour.
22 As for Ms. Rau, she only had months as a practicing attorney when she began her work on this
23 case, and no experience in the area of civil rights litigation. The Court will also cut her requested
24 rate by 20%, to \$228 per hour.

25 Having reviewed all of the time entries of all counsel, the Court rejects defendants’
26 assertions that Mr. Galipo’s judgment as to the time he needed to prepare for what turned out to
27 be a very successful trial for plaintiffs should be questioned. Aside from citing the numbers of
28 hours sought for various tasks, the Court has not been presented with any sound rationale to

1 question his or Mr. Guizar's under oath declarations. Defense counsel's opinion as to Mr. Guizar's
2 legal abilities, or the significance of his questions at depositions or his performance at trial, do not
3 undercut his sworn statements. The fact that Mr. Galipo conducted the bulk of the trial does not
4 mean that Mr. Guizar should not be entitled to his time preparing for and being at the trial. He
5 represented different plaintiffs; his presence was proper and necessary. He also conducted some
6 witness examinations and cross-examinations, and gave a closing argument. There was little
7 repetition between the questions and arguments of Mr. Galipo and Mr. Guizar, which reflects time
8 they spent coordinating their trial presentations. Defense counsel has not convinced the Court
9 that the hours spent by these counsel on the various tasks "are well beyond what a reasonable
10 attorney would claim." Further, many hours are claimed based on time spent by counsel reviewing
11 depositions, statements and reports, and meeting with experts and preparing for expert testimony.
12 The Court observed at trial that much of plaintiffs' case was based on a careful review and
13 understanding of prior statements made by defendants, both immediately following the incident
14 and at deposition. This review necessarily required many hours to compare, contrast, index and
15 reference those statements. The Court also observed the importance of expert testimony at trial,
16 and the need for a thorough comprehension and understandable presentation of expert opinions.
17 The requested hours are not excessive.

18 Nor does the Court believe that reduction is needed when more than one attorney appeared
19 at a deposition, or at a court hearing. First, at a minimum, one attorney for plaintiffs E.E. and
20 S.G.P. and one attorney for plaintiff P.C. were entitled to attend and be compensated for such
21 proceedings. Next, even if one plaintiff had multiple attorneys at a proceeding, this is not per se
22 duplicative. "Duplicative hours are those where the presence of more than one attorney does not
23 provide benefit to the client." Oberfelder v. City of Petaluma, 2002 WL 472308, *7 (N.D. Cal. Jan.
24 29, 2002) (citation omitted). As in Oberfelder, this Court does not find the presence of multiple
25 attorneys at depositions, hearings or trial to be unreasonable or atypical, especially as multiple
26 clients were being represented. Indeed, it is far more effective to judge a deponent's demeanor
27 based on an attorney's actual in-person perception; the ability to effectively discuss case strategy
28 and division of labor may well depend on multiple view points presented by multiple attorneys.

1 See, e.g., Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008) (recognizing that
2 some duplication is necessary when litigation extends over years, and that it would be “the highly
3 atypical civil rights case where plaintiff’s lawyer engages in churning;” “the court should defer to
4 the winning lawyer’s professional judgment as to how much time he was required to spend on the
5 case”). The Court is also not persuaded that plaintiffs should not be able to recover for time
6 beyond the hours actually spent at a deposition. Time preparing for and traveling to and from the
7 deposition is also recoverable. So may counsel be awarded fees for time spent conferring with
8 co-counsel.

9 However, the Court cannot conclude that Mr. Guizar’s time spent writing letters to the
10 mayor and other public figures, or preparing for a press conference, “contributed directly and
11 substantially” to plaintiffs’ litigation goals. See Gilbrook v. City of Westminster, 177 F.3d 839, 877
12 (9th Cir. 1999).⁵ The Court will reduce the number of hours by 8 for letters to “Carillo on behalf
13 of family,” to the Mayor, for the family “regarding citizen compt [sic]”, to the Police Commissioners,
14 and to Senator Romero, and by 2 hours for time Mr. Guizar spent preparing for a press
15 conference.

16 Defendants offer no persuasive reasons to reduce Mr. Fattahi’s hours based on duplication
17 of efforts. The fact that a team of lawyers prepared the case for plaintiffs does not mean that they
18 should not be able to bill hours for talking to each other, or for an associate to prepare the attorney
19 who will actually litigate the case. Finally, Ms. Rau took over for Mr. Fattahi when he left Mr.
20 Galipo’s office in July, 2011. The bulk of her time spent reviewing and updating documents is not
21 unreasonable.

22 The Court rejects defendants’ suggestion that the lodestar be reduced by 40% based on
23 the percent of defendants as to whom no liability was established. The overall relief obtained by
24 plaintiffs was substantial; the issues as to each defendant were substantially similar; and the hours
25 attributable to the four non-lie defendants that were not also necessary for the other defendants

27 ⁵ Defendants object to, among other entries, 30 hours of time spent by Mr. Guizar writing
28 letters to the mayor, police commissioner, and others, and 2 hours of time preparing for a press
conference.

1 is insignificant. Nevertheless, the Court will reduce the overall number of hours being sought by
2 all counsel in the First Motion by 10% to account for this factor, as well as to account for the
3 relatively straight-forward nature of the litigation (*i.e.*, little in the way of novel or complicated legal
4 issues), the lack of substantiation that counsel was precluded from accepting other cases as a
5 result of handling this matter, and some duplication of efforts based on changes in counsel during
6 the course of this litigation.

7 As to Mr. Segall-Gutierrez, however, the analysis is quite different. In his declaration, he
8 asserts that he worked on this case for approximately four years. He states in his Reply brief that
9 he acted in the role of a “co-counsel” for plaintiff E.E., presumably with Mr. Guizar. Reply to
10 Second Motion, at 3. His time records indicate that he first became involved in this action in
11 August, 2007, was working regularly on the action until February 2010, but then had little
12 involvement until February, 2012, an almost two-year gap. His activities after that time were
13 limited to only a few hours, mostly involving the preparation of a declaration of his client. He was
14 not involved in the trial of the case. While Mr. Segall-Gutierrez argues that his accomplishments
15 as a civil rights attorney are attested to by his declaration and “the supporting declarations”
16 (Second Motion, at 6), he submits no such supporting declarations.⁶ His own declaration is filled
17 with inconsistencies and/or errors. For example, he indicates that he attended law school until
18 1999, but has managed his own law firm since 1995. Segall-Gutierrez Declaration, at ¶¶ 7, 8. In
19 his Reply brief, however, he indicates that he has been an attorney since 2005. He does not detail
20 when he made the “natural transition” to civil rights litigation (*id.*, at ¶ 8). While he may have
21 settled two federal civil rights cases with the City of Los Angeles (and defendants offer strong
22 evidence that he may be over-stating, if not misrepresenting, his involvement in those actions),
23 he does not assert that he has **tried** any federal civil rights cases, or that he has tried any civil
24 rights cases at all. *Id.*, at ¶¶ 9, 10. One of his two “accomplishments” in civil rights cases “in the
25 last eighteen months,” *i.e.*, prior to the signing of the declaration on May 9, 2012, occurred well
26 over **three years** prior. *Id.*, at ¶ 11. While he indicates that he specializes in police misconduct
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28 ⁶ The Second Motion, concerning Mr. Segall-Gutierrez, appears to be a “copy-and-paste” job
of the First Motion, as to which there were supporting declarations.

1 civil rights litigation (*id.*, at ¶ 12), his declaration does not support that assertion. As to the time
2 he spent on this case, his time sheets include entries amounting to many, many hours for his
3 “review” of documents prepared by others, but his contribution to those documents, or the
4 necessity for him to review those documents to advance this litigation, goes unaddressed. His
5 assertion that “the difficulty of this case and the skill, experience and ability necessary to prevail
6 on this case” (*id.*, at ¶ 14) warrants a fee of \$350 per hour to him is not supported by anything
7 contained in the Second Motion. Indeed, at the time he began work on this case, he had been an
8 attorney for only two years. In the Reply to the Second Motion, Mr. Segall-Gutierrez does little to
9 counter or even address the specific claims raised by defendants in their Opposition, other than
10 to argue that he has been an attorney since December 2005, has worked on “several” civil rights
11 cases, and that he worked 141 hours on this case and did not abandon his client. There is no
12 evidence before the Court – from co-counsel, from plaintiffs, or even from Mr. Segall-Gutierrez
13 himself – that the actual work done by Mr. Segall-Gutierrez contributed in any way to the final
14 results in this case or provided a benefit to his client that was not being provided by Mr. Guizar.
15 While he asserts that he “did not assume representation of Plaintiff; he was a co-counsel” (Reply
16 to Second Motion, at 3), what he actually did as co-counsel that added to the advancement of the
17 case is left largely to the imagination. The Court concludes that his contribution to this matter was
18 minimal at best, and therefore reduces his number of hours to 60, at an hourly rate of \$200. The
19 10% reduction discussed above is also appropriate as to Mr. Segall-Gutierrez’ fees.

20 In sum, taking into account the 10% across-the-board adjustment to the number of hours,
21 the deduction of 10 hours from Mr. Guizar, and the adjustment in the hourly rates of Mr. Fattahi
22 and Ms. Rau, the Court awards attorneys fees based on the First Motion as follows: (1) Mr. Galipo
23 -- 702.4 hours at \$700 per hour (\$491,680); (2) Mr. Guizar -- 313.7 hours at \$500 per hour
24 (\$156,850); (3) Mr. Fattahi -- 92.2 hours at \$320 per hour (\$29,504); and (4) Ms. Rau -- 80.2 hours
25 at \$228 per hour (\$18,285.60), **for an award on the First Motion of \$696,319.60**. An additional
26 award of **\$3,876** is appropriate for the time spent opposing defendants’ Motion for New Trial, and
27 preparing the Reply to the First Motion (17 hours by Ms. Rau at \$228 per hour). The court
28 concludes that the **total award on the First Motion (\$700,195.60)** does not amount to a windfall

1 to the attorneys involved. While the Court is not required to consider proportionality of fees to
2 determine if the amount sought is reasonable, the Court notes that plaintiffs seek \$791,883.50
3 based on a total jury award of over \$3.2 million, or only about 25% of the amount awarded. The
4 amount the Court is actually awarding is even less, about 22% of the amount awarded by the jury.
5 As for the Second Motion, the Court awards attorneys fees to Mr. Segall-Gutierrez in the amount
6 of **\$10,800**, based on 60 hours at \$200 per hour, with a 10% adjustment.⁷

7 **IT IS SO ORDERED.**

8  **FOR PUBLIC RELEASE**

9 DATED: September 14, 2012

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 PAUL L. ABRAMS
11 UNITED STATES MAGISTRATE JUDGE

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 ⁷ Counsel for plaintiffs should advise the Clerk's Office that defendants' Motion for Judgment
28 as a Matter of Law or, in the alternative, Motion for a New Trial has been denied, so that a
determination on the previously-submitted Bills of Costs can be made.

Priority _____
Send _____
Enter _____
Closed _____
JS-5/JS-6 _____
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TITLE: Leonard Avila v. Los Angeles Police Department, et al.

=====
PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Not Present
Courtroom Clerk Court Reporter

COUNSEL PRESENT FOR PLAINTIFF: **COUNSEL PRESENT FOR DEFENDANTS:**

Not Present Not Present

=====
PROCEEDINGS (in chambers): ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND LIQUIDATED DAMAGES [Docket No. 170]

This matter is before the Court on Plaintiff Leonard Avila's ("Plaintiff") Motion for Attorneys' Fees and Liquidated Damages ("Motion"), filed May 3, 2012. Defendants Los Angeles Police Department ("LAPD"), City of Los Angeles, and Commander Stuart Maislin (collectively, "Defendants") filed an Opposition ("Opposition") on May 14, 2012, to which Plaintiff submitted a Reply ("Reply") on May 21, 2012. On May 14, 2012, Defendants filed a Request for Judicial Notice ("RJN") to which Plaintiff filed no objection. Therefore, the Request for Judicial notice is GRANTED. The Court found the matter suitable for disposition without oral argument and vacated the hearing set for June 4, 2012. See Fed. R. Civ. P. 78(b). For the following reasons, Plaintiff's Motion is GRANTED IN PART and DENIED IN PART.

I. FACTUAL AND PROCEDURAL BACKGROUND

The instant action was brought under the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 215(a)(3). Plaintiff is a former police officer employed by Defendant LAPD, and was terminated after he testified in the trial of a coworker regarding FLSA violations in his department. (Mot. 1, May 3, 2012, ECF No. 170.) On April 4, 2012, a unanimous jury determined that Plaintiff's termination was retaliatory, in violation of § 215(a)(3) of the FLSA. (Mot. 1.) Remedies are set forth in 29 U.S.C. § 216(b): "The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). Plaintiff also seeks liquidated damages in the amount of his jury award of \$50,000. (Mot. 11.) Section 216(b) authorizes liquidated damages to plaintiffs prevailing on § 215(a)(3) claims:

Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title,

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including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages.

29 U.S.C. § 216(b).

Plaintiff's Motion seeks a total of \$748,522.50 in attorneys' fees, and liquidated damages of \$50,000. (Mot. 14.) Defendants filed an Opposition, arguing that Plaintiff's calculations are inaccurate and that the attorneys' fees requested are excessive and unreasonable. (See generally Opp'n, May 14, 2012, ECF No.186.) Defendants also argue that Plaintiff is not entitled to liquidated damages. (Opp'n 15-19.) Plaintiff's Reply argues that his request is reasonable and that there is no basis for reducing the requested attorneys' fees. (See generally Reply, May 21, 2012, ECF No. 194.) Plaintiff also argues that liquidated damages are mandatory because Defendants do not have a "good faith" defense. (Reply 5.)

II. DISCUSSION

A. Plaintiff's Request for Attorney's Fees

Section 216(b) authorizes the payment of attorneys' fees by a defendant when a plaintiff is successful in bringing a FLSA claim. 29 U.S.C. § 216(b). The Court holds that Plaintiff is thus entitled to such a recovery and now determines the appropriate amount. The district court uses the lodestar method to determine the appropriate amount of attorneys' fees. *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). Courts calculate the lodestar figure by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate for the region and for the experience of the attorney. *City of Riverside v. Rivera*, 477 U.S. 561, 568-69 (1986); *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009).

Plaintiffs have used the lodestar method to reach a total of \$748,522.50 in attorneys' fees. (Mot. 4-5.) The Motion asserts that lead attorney Matthew McNicholas's services are billed at \$850 per hour. (Mot. 5.) Plaintiff claims that Mr. McNicholas worked over 500 hours on Plaintiff's case. (Mot. 5.) For Douglas Winter, Plaintiff requests 284 hours at \$600 per hour. (Mot. 5.) Catherine Schmidt's 126.25 hours are billed at \$550 per hour. (Mot. 5.) For Alyssa Schabloski's 42 hours, Plaintiff requests \$450 per hour. Cameron Fredman's 107.50 hours are billed at \$350 per hour. (Mot. 5.) Finally, the services of paralegal Dawn McGuire are billed at \$150 per hour, for 33.75 hours. (Mot. 5.) In addition to the attorneys at McNicholas & McNicholas, LLP ("McNicholas & McNicholas"), Plaintiff also retained the services of an additional attorney, Stuart Esner, to address the issue of exhaustion of judicial remedies. (Mot. 5.) For his 68.4 hours of work, Mr. Esner requests \$400 per hour. (Mot. 6.) Defendants contest Plaintiff's calculations, for various reasons including both the hourly rates and number of hours applied in calculating the lodestar number. (See generally Opp'n.)

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1. Reasonable Hourly Rate

A reasonable hourly rate is based on the market rates of the region and the experience of the lawyer. See *Rivera*, 477 U.S. at 568-69; *McCown*, 565 F.3d at 1102. Defendants do not contest the hourly billing rates charged by Mr. Fredman and Ms. McGuire of \$350 and \$150 per hour, respectively. (Opp'n 10; Decl. of Mark K. Kitabayashi in Supp. of Opp'n ("Kitabayashi Decl.") ¶¶ 11, May 14, 2012, ECF No. 186-2.) Defendants also do not dispute the hourly rate of \$400 charged by independent attorney, Stuart Esner. (Mot. 6; Kitabayashi Decl. ¶ 11.)

For Plaintiff's lead counsel, Mr. McNicholas, Plaintiff requests \$850 per hour in attorneys' fees. (Mot. 5.) However, Defendants argue that this rate should be reduced to \$600, the amount Mr. McNicholas was awarded in a related case, *Romney v. Bratton*, Case No. CV 09-3048-VPF (PLAx) (C.D. Cal. Dec. 1, 2011).¹ (Opp'n 10-11.) Defendants also note that Mr. McNicholas's request of \$850 per hour far exceeds rates charged in the ninth decile by partners practicing in California. (Kitabayashi Decl. ¶ 10(a), Ex. A.) However, the data consulted by Defendants reports the average hourly rates for the entire state of California. (See generally Kitabayashi Decl. Ex. A.) This number is the average of all regions in California, including those with significantly lower costs of living than Los Angeles, where McNicholas & McNicholas practices. Thus, it is unreasonable to decrease Mr. McNicholas's rate simply because it exceeds rates charged in the ninth decile in California as a whole. However, the Court finds that Plaintiff's request for \$850 per hour is excessive.

Plaintiff argues that this increased rate is supported by the rates he received in two recent cases. (Decl. of Matthew S. McNicholas in Supp. of Mot. ("McNicholas Decl.") ¶ 15, May 3, 2012, ECF No. 171.) In 2011, Plaintiff was retained at an hourly rate of \$850 to negotiate a separation package. (McNicholas Decl. ¶ 15.) Plaintiff was also awarded an hourly rate of \$800 in a recent case. (McNicholas Decl. ¶ 15.) The Court declines to award Plaintiff an hourly rate of \$850 based upon these two outliers. As noted by Mr. McNicholas, his typically awarded rate is \$650 per hour. (McNicholas Decl. 4-5.) In the most similar case to the present case, *Romney*, Mr. McNicholas claims he was awarded an hourly rate of \$650. (McNicholas Decl. ¶ 15.) However, the Court recognizes that the experience of the attorney is relevant to calculating his appropriate hourly rate. In *Romney*, Mr. McNicholas succeeded in gaining his client a nearly \$4 million jury verdict. (McNicholas Decl. ¶ 6.) It is reasonable for Mr. McNicholas to request a higher rate after winning

¹ It is unclear whether Mr. McNicholas was awarded \$600 or \$650 per hour. Plaintiff's Reply states he was awarded \$600/hour for his work in *Romney*. (Reply 4.) However, Mr. McNicholas states in his declaration that he was awarded \$650/hour. (Decl. of Matthew S. McNicholas in Supp. of Mot. ("McNicholas Decl.") ¶ 15, May 3, 2012, ECF No. 171.)

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a significant award in a closely related case. Therefore, the Court finds an hourly rate of **\$700/hour** to be a reasonable rate for Plaintiff's lead counsel, Mr. McNicholas.

Defendants argue that the rates requested by Plaintiff's attorneys Mr. Winter, Ms. Schmidt, and Ms. Schabloski should be reduced. (Opp'n 10; Kitabayashi Decl. 5.) Mr. McNicholas has attested to the skill and expertise of these attorneys, rates charged in other cases, and their work product at McNicholas & McNicholas. (McNicholas Decl. ¶¶ 17-21.) Defendants make the unsupported assumption that because the rate charged by Mr. McNicholas exceeds what they believe to be a reasonable rate by 30%, the rates charged by the remaining attorneys should also be decreased by 30%. (Kitabayashi Decl. ¶ 10.) Defendants provide no other support for their argument that the rates charged by these attorney should be decreased other than noting once again that the rates charged by Plaintiff's attorneys exceed the rates charged in the ninth decile in California. (Kitabayashi Decl. ¶ 10.) However, as noted above, the rates indicated in Defendants' chart represent the average of rates charged by attorneys in all of California. (Kitabayashi Decl. Ex. A 3-4.) These rates are not indicative of a reasonable rate in Los Angeles.² Without further evidence that the rates charged by Mr. Winter, Ms. Schmidt, and Ms. Schabloski are unreasonable, the Court grants the rates requested in Plaintiff's Motion. The Court awards Mr. Winter an hourly rate of **\$600/hour**, Ms. Schmidt an hourly rate of **\$550/hour**, and Ms. Schabloski an hourly rate of **\$450/hour**.

2. Reasonable Number of Hours

In the Ninth Circuit:

[t]he fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked. The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged

Gates v. Deukmejian, 987 F.2d 1392, 1397 (9th Cir. 1992) (citation omitted). Plaintiff has submitted a declaration with an attached record of all time expended by his attorneys on the

² Defendants' argument that Mr. Winter's rate should be reduced because it exceeds rates charged in the ninth decile by partners in California also fails because this argument does not take into account Mr. Winter's experience. (Kitabayashi Decl. ¶ 10(b).) According to Defendants' own chart, a partner in the ninth decile with 22 years of experience (Kitabayashi Decl. ¶ 11; McNicholas Decl. ¶ 17) bills at \$665/hr. (Kitabayashi Decl. Ex. A, at 4). Therefore, Defendants' argument is not a basis for reducing Mr. Winter's requested rate of \$600/hr.

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matter, in fifteen minute increments. (*See generally* McNicholas Decl. Ex. 1.) The record includes not only the amount of time expended, but how the time was spent. (McNicholas Decl. Ex. 1.)

Defendants advance several theories as to why the number of hours used to calculate Plaintiff's lodestar should be reduced. (*See generally* Opp'n.) The Court will consider each of Defendants' theories individually.

a. Administrative and Clerical Work

Defendants argue that the number of hours worked by Plaintiff's attorneys should be reduced for all hours spent on administrative or clerical work. (Opp'n 12.) In support of their argument that that all hours spent on administrative and clerical work should be reduced by 100%, Defendants cite *Nadarajah v. Holder*, 569 F.3d 906 (9th Cir. 2009). (Opp'n 12; Decl. of Gerald G. Knapton in Supp. of Opp'n ("Knapton Decl.") ¶¶ 25-27, May 14, 2012, ECF No. 186-3; Knapton Decl. Ex. 3A.) *Nadarajah* states that clerical tasks, such as tracking a package and assembling documents, billed by a **paralegal** should be subsumed in the firm's overhead rather than billed at the paralegal's rates. 569 F.3d at 921. Of the billing entries identified as clerical work by Defendants, the Court finds that only the printing of exhibits by McNicholas & McNicholas's paralegal on November 30, 2011 and the 10.5 hours billed by "YB" at McNicholas & McNicholas constitute clerical work. (Knapton Decl. Ex. 3A.) The Court thus grants Defendants' request as to these hours and reduces the hours billed by paralegal McGuire by **1 hour**, and the hours billed by "YB" by **10.5 hours**.³

b. Duplicative Work

Defendants argue that Plaintiff's requested attorneys' fees should be substantially reduced for duplicative work. (Opp'n 12.) Alleged duplicative billings include: work repeated by various lawyers; internal conferences; responses to errors made by Plaintiff's attorneys; attendance of multiple attorneys at conferences and hearings; work done by Stuart Esner; and hours that attorneys spent consulting with each other. (Knapton Decl. ¶¶ 38-44.)

³ It is unclear to the Court whether Plaintiff intended to bill the hours clocked by "YB". YB's 10.5 hours are not included in Plaintiff's breakdown of hours and hourly billing rates. (McNicholas Decl. 8; Mot. 5.) Yet, when the sum of hours billed by the attorneys at McNicholas & McNicholas is calculated, a total of \$722,900 is reached. This is \$262.50 short of the supposed \$723,162.50 requested by Plaintiff for work by McNicholas & McNicholas alone (McNicholas Decl. 9; Mot. 5), exactly the amount the records show billed by YB (*see generally* McNicholas Decl. Ex. 1; Knapton Decl. Ex. 3A). Regardless of whether Plaintiff intended to request reimbursement for the work billed by YB, the Court determines that the \$262.50 is inappropriate and will not include these fees in the award.

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In support of their argument that internal conferences should not be billed, Defendants point only to memoranda issued by the Committee on Mandatory Fee Arbitration, created in 1998 and 2003, which specifically state that the memos have not been adopted by the State Bar and are intended to assist arbitrators in detecting bill padding. (State Bar of Cal. Comm. on Mandatory Fee Arbitration, Arbitration Advisory 98-03, Determination of a "Reasonable" Fee (June 23, 1998); State Bar of Cal. Comm. on Mandatory Fee Arbitration, Arbitration Advisory 03-01, Detecting Attorney Bill Padding (January 29, 2003); Knapton Decl. ¶ 38.) While the Court finds some of the techniques persuasive, the Court will not grant such broad, unspecific cuts without further evidence of duplicative work. Defendants argue that time spent by attorneys consulting one another should be eliminated as duplicative work. The Court declines to reduce Plaintiff's requested attorneys' fees for such a reason, because it is often necessary for attorneys working on a single project to meet and confer about the case in order to provide the best assistance possible.

Defendants also argue that hours spent by the attorneys at McNicholas & McNicholas working on Plaintiff's Opposition to Defendants' Motion for Summary Judgment are duplicative because another attorney, Stuart Esner, was retained to work on the Opposition. (Knapton Decl. ¶ 41.) However, Mr. Esner was retained solely to address the issue of exhaustion of judicial remedies. (Mot. 5.) Defendants have provided no argument to suggest that, because Mr. Esner was retained to address an issue, any work done by the attorneys at McNicholas & McNicholas themselves is necessarily duplicative. Thus, the Court declines to reduce the number of billable hours pursuant to this theory.

The Court agrees with Defendants that time spent on work that ultimately failed due to mistake and oversight of Plaintiff's attorneys is not compensable. (Knapton Decl. ¶ 39.) Therefore, for Plaintiff's attorneys' failure to timely file his motions in limine, the Court will deduct **11 hours** of the time billed by Mr. Winter and **1.75 hours** of the time billed by Mr. McNicholas. The Court will also deduct time spent by Plaintiff's attorneys on the preparation of an expert whom they failed to timely designate as an expert. The Court deducts **5 hours** of the time billed by Mr. Fredman, **12.75 hours** of the time billed by Mr. Winter, and **5.25** of the hours billed by Mr. McNicholas. The Court declines to deduct billable hours for counsels' failure to file a Writ regarding the Board of Rights findings.

c. Excessive Time Billed

Defendants argue that the hours billed by Plaintiff's attorneys should be reduced because counsel billed excessive hours to complete certain tasks that should have been completed more efficiently. (Knapton Decl. ¶¶ 45-49.) Defendants also note that because Plaintiff's counsel bills in minimum increments of 0.25 hours, shorts tasks such as checking an email are over-billed. (Knapton Decl. ¶ 48.) For the billings that Defendants have identified as excessive, they request a 40% reduction. (Knapton Decl. ¶ 49.) "[D]uplicative work, however, is not a justification for cutting a fee, unless the lawyer does *unnecessarily* duplicative work." *Mendez v. County of San Bernardino*, 540 F.3d

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1109, 1129 (9th Cir. 2008) (internal quotation marks omitted). Therefore, in order to achieve their requested reduction, Defendants must clearly demonstrate that Plaintiff's attorneys engaged in work that was unnecessarily time consuming.

The Court agrees that billing 15 minutes for reviewing a single email is excessive and grants Defendants' request as to those records. The Court deducts **.5 hours** of the time billed by Ms. Schmidt and **.5 hours** of the time billed by Mr. McNicholas.

Defendants make the unsupported assumption that Plaintiff's counsel billed an excessive amount of time for the completion of certain tasks that do not require such time. (Knapton Decl. ¶ 47.) They have pointed to several entries that supposedly fall within this group, yet have failed to note exactly which tasks they believe took excessive time, how much time the tasks took, or what a reasonable amount of time would be. (See generally Knapton Decl. Ex. 3E.) Based upon a review of Plaintiff's counsels' billing records, there do not appear to be any tasks that were grossly over-billed. (See generally Knapton Decl. Ex. 2.; McNicholas Decl. Ex. 1.) The taking of depositions, preparation of an opposition to summary judgment, and preparation for trial are tasks that are generally time consuming, and the Court sees nothing that necessitates a reduction of 40% as to those tasks.

d. Block Billing

Defendants request that the Court reduce Plaintiff's attorneys' fees by 30% overall to account for numerous records that were block billed. (Knapton Decl. ¶¶ 50-55.) Block billing is the practice of grouping several tasks into a single time recording. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007). Courts frown upon block billing because it impedes the court's ability to determine whether billed hours are reasonable and tends to inflate legal fees. *Mendez*, 540 F.3d at 1128-29. Defendants argue that a total of 274.5 hours have been block billed and should therefore be reduced by 30%. (Knapton Decl. ¶ 54.) The Court disagrees that such a reduction is necessary and finds that Plaintiff's attorneys have not impermissibly block billed hours. The entries are sufficiently clear and discrete for the Court to assess what the attorneys were working on and whether they expended an unreasonable amount of time. (See generally McNicholas Decl. Ex. 1; Knapton Decl. Ex. 3B.)

The Court also notes that the vast majority of the entries alleged by Defendants to be block billing are in reality broken-down explanations of each part of a single task. (See generally Knapton Decl. Ex. 3B.) For example, one entry criticized by Defendants states: "Review CPF's research re defense argument; read and review related cases." (Knapton Decl. Ex. 3B 1.) While initially appearing to include several tasks, this entry in fact simply provides an explanation of various parts of a single task: the review of CPF's research. Most of the entries pointed to by Defendants are of the same nature: detailed breakdowns of individual tasks into discrete parts. Because the Court finds that Plaintiff's attorneys' billing records sufficiently articulate each task, the Court denies Defendants' request to reduce the 274.5 hours by 30%.

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e. Vague Billing Descriptions

Defendants argue that several hours billed should be reduced by 30% because the billing descriptions are vague. (Knapton Decl. ¶¶ 56-58.) Records that are not sufficiently detailed prevent the Court from determining whether the hours billed are reasonable and can result in the billing of excessive hours. *In re Donovan*, 877 F.2d 982, 995 (D.C. Cir. 1989). The Court concludes that the majority of the records pointed to by Defendants are sufficiently detailed to allow the Court to determine the reasonableness. However, Mr. McNicholas has billed several hours on tasks simply described as "trial preparation" or "work on trial documents". (See generally McNicholas Decl. Ex. 1; Knapton Decl. Ex. 3C 2.) From these limited descriptions, it is entirely unclear what Mr. McNicholas was working on and whether it required the several hours that he billed. The Court finds that 34.5 of the hours billed by Mr. McNicholas are impermissibly vague. The Court will apply the 30% deduction requested by Defendants because this is sufficient to capture the potential inflation of hours attributable to the vague records. (Knapton Decl. ¶ 58.) Thus, the Court deducts **10.35 hours** of the time billed by Mr. McNicholas.

f. Rounded Off Billing Entries

Defendants argue that the Court should reduce Plaintiff's requested attorneys' fees by 10% to account for their unsupported assumption that Plaintiff's attorneys engage in a routine practice of rounding off their entries to the nearest hour. (Opp'n 12; Knapton Decl. ¶¶ 59-61.) Defendants point to several entries that they assume were rounded up, and the support for their argument is simply noting that many billing entries are even numbers. (Knapton Decl. ¶ 60.) Defendants also fail to point to case law supporting their argument that attorney time must be billed in six minute increments, and that such alleged roundings are a proper basis for adjusting the calculation of a lodestar. Thus, the Court declines to reduce Plaintiff's request based on Defendants' allegations of improper rounding.

3. Post-Lodestar Calculation Adjustments

The district court may adjust a fee upward or downward after calculating the lodestar to account for special circumstances. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

a. Plaintiff's Limited Success

Courts recognize that a party may be the prevailing party, yet have only succeeded on a fraction of its claims. *Id.* at 434. To account for such situations, courts may award the full amount of attorneys' fees or grant additional reductions. *Id.*; *Marsu, B.V. v. Walt Disney Co.*, 185 F.3d 932, 939 (9th Cir. 1999). Relevant to this inquiry is the similarity between the successful and unsuccessful claims, because "work on an unsuccessful claim cannot be deemed to have been

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expended in pursuit of the ultimate result achieved." *Hensley*, 461 U.S. at 435 (internal quotation marks omitted).

In this case, Plaintiff prevailed on only his FLSA retaliation claim, losing his due process and state law claims. (Reply 2.) Defendants argue that Plaintiff's successful and unsuccessful claims are substantially unrelated and that Plaintiff's fees should thus be reduced by 80 to 90%. (Opp'n 7-8.) The Court disagrees. The claims are based upon the same core set of facts and generally related legal theories. See *Hensley*, 461 U.S. at 435. The majority of the hours spent on the most time-consuming tasks, such as discovery and trial, would have been necessary regardless of whether Plaintiff had pursued his failed claims. However, the Court recognizes that some effort was expended on the failed claims that did not contribute to Plaintiff's successful claims and therefore grants Defendants a **10% reduction** in the overall amount of fees incurred.

Defendants also argue that an overall reduction is necessary regardless of the relatedness of the claims because Plaintiff's relief is substantially less than what he initially sought. (Opp'n 13.) The Court recognizes that in relation to the multitude of claims brought and Plaintiff's counsels' success in the *Romney* trial, Plaintiff's actual success in this case was limited. The Court believes that the 10% reduction is sufficient to adjust the award for deductions necessary to account for partial success in spite of the relatedness of the claims. See *Hensley*, 461 U.S. at 436 (holding that reductions in attorneys' fees may be necessary even if all claims were interrelated to account for partial success of the plaintiff).

b. Similarity to *Romney* Case

Defendants argue that Plaintiff's attorneys' fees award should be substantially reduced to account for the fact that Plaintiff's attorneys also litigated the *Romney* case. (Opp'n 8-9.) Defendants argue that Plaintiff's counsels' experience with the *Romney* case resulted in "nothing novel or difficult about Plaintiff's case" that would require such a substantial amount of the attorneys' time and effort. (Opp'n 9.) Plaintiff disagrees, arguing that there were some significant differences "including the judicial exhaustion issue, Maislin's changed testimony, [and] Avila's resignation." (Reply 3.) While there were many similarities between the instant case and *Romney*, the Court agrees with Plaintiff that there were several differences necessitating the expenditure of additional time and resources. Thus, the Court declines to reduce Plaintiff's request for fees because Mr. McNicholas litigated the *Romney* case.

B. Plaintiff's Request for Liquidated Damages

Plaintiff argues that he is entitled to an amount of liquidated damages equal to the amount of lost wages awarded by the jury. (Mot. 11-13.) He argues that the language of 29 U.S.C. § 216(b) requires the Court to award such damages when a violation of the FLSA has been found. (Mot. 12.) Defendants disagree with Plaintiff's interpretation of the statute, arguing that liquidated damages are discretionary when defendants are found to have engaged in retaliatory conduct,

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rather than wage violations. (Opp'n 15-17.) In support, Defendants point to *Braswell v. City of El Dorado*, 187 F.3d 954 (8th Cir. 1999), and *Blanton v. City of Murfreesboro*, 856 F.2d 731 (6th Cir. 1988), both of which held that an award of liquidated damages in a FLSA retaliation claim is discretionary. (Opp'n 16.) Similarly, in the related *Romney* case, also concerning FLSA retaliation, the court declined to award liquidated damages. (RJN Ex. 4, Ex. 5, May 14, 2012, ECF No. 187-1.) Defendants further argue that the Court should exercise its discretion by not awarding the liquidated damages because an award in this case would not work to advance the purposes of the FLSA. (Opp'n 17.)

Finally, Defendants argue that even if the Court finds that an award would further the purposes of the FLSA, liquidated damages should not be granted because Defendants have a "good faith" defense. (Opp'n 18-19.) Section 260 states that if an employer demonstrates that the violation was committed in good faith, then the court may exercise its discretion and decline to award liquidated damages. 29 U.S.C. § 260. The Court finds that Defendants have not established that they had "reasonable grounds for believing that [their] act or omission was not a violation of the Fair Labor Standards Act." 29 U.S.C. § 260. The Court disagrees with Defendants' argument that because the jury declined to find Defendants liable on Plaintiff's due process and state law claims, Defendants necessarily have a good faith defense. (Opp'n 18-19; Kitabayashi Decl. ¶ 15.)

In the related *Romney* case, liquidated damages were denied not because Defendants had a good faith defense, but because the court found that Plaintiff's award of over \$100,000 in past economic damages was sufficient to effectuate the purposes of the FLSA. (RJN Ex. 4 3.) However, the Court believes that in this case, an award of liquidated damages would help advance the goals of the FLSA. In *Romney*, the plaintiff received a nearly \$4 million verdict, while here, Plaintiff received only \$50,000. (McNicholas Decl. ¶ 6; Opp'n 1.) The Court finds that the additional \$50,000 in liquidated damages would work to compensate Plaintiff for a delay in payment of wages owed and also provide an incentive for future employees to report wage and hour violations by their employers. *Hultgren v. Cnty. of Lancaster*, 913 F.2d 498, 508-09 (8th Cir. 1990) ("Section 216's provision for liquidated damages is intended in part to compensate employees for the delay in payment of wages owed under the FLSA; it is a penalty or a punishment."); (RJN Ex. 4 3.) Thus, the Court awards Plaintiff liquidated damages in the amount of his damages award: \$50,000.

C. Final Calculations

Plaintiff's initial Motion includes a request for: (1) 503.75 hours for Matthew McNicholas; (2) 284 hours for Douglas Winter; (3) 126.25 hours for Catherine Schmidt; (4) 42 hours for Alyssa Schabloski; (5) 107.5 hours for Cameron Fredman; (6) 33.75 hours for Dawn McGuire; and (7) 68.4 hours for Stuart Esner. (Mot. 5.) The Court declines to allow Plaintiff to collect for the hours billed by "YB".

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The Court holds that the attorneys' hours will be billed accordingly: (1) \$700/hr for Mr. McNicholas; (2) \$600/hr for Mr. Winter; (3) \$550/hr for Ms. Schmidt; (4) \$450/hr for Ms. Schabloski; (5) \$350/hr for Mr. Fredman; (6) \$150/hr for Ms. McGuire; and (7) \$400/hr for Mr. Esner.

The hours billed by Mr. McNicholas are reduced by 17.85 hours, bringing his total billable hours to 485.9 hours. Thus, Mr. McNicholas's fees total \$340,130.

The hours billed by Mr. Winter are reduced by 23.75 hours, bringing his total billable hours to 260.25. Thus, Mr. Winter's fees total \$156,150.

Ms. Schmidt's billable hours are reduced by only .5 hours, bringing her total billable hours to 125.75. Therefore, \$69,162.50 is the total for her services.

Mr. Fredman's hours total 102.5, after a reduction of 5 hours. Thus, Plaintiff may recover \$35,875 for the services of Mr. Fredman.

The Court will deduct 1 hour of pay from the total amount billed by Ms. McGuire. Thus, Plaintiff may recover \$2,812.50 for the services of Ms. McGuire.⁴

For the services of Ms. Schabloski⁵ and Mr. Esner,⁶ the Court grants Plaintiff the full amount requested: \$14,287.50 and \$25,360 respectively. (Mot. 5-6.) This brings the preliminary total to \$643,877.50. Applying a 10% reduction to account for Plaintiff's limited success, the Court **AWARDS Plaintiff \$579,400 in attorneys' fees.**

The Court also **GRANTS Plaintiff \$50,000 in liquidated damages.**

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⁴ Ms. McGuire billed 14 hours at no charge. (McNicholas Decl. Ex. 1.) Thus, the fee award for Ms. McGuire is based on an initial request of 19.75 hours billed at the hourly rate.

⁵ Ms. Schabloski's billed 10.25 hours at no charge. (McNicholas Decl. Ex. 1.) Thus, the fee award is based on an initial request of 31.75 hours billed at the hourly rate.

⁶ Mr. Esner did not charge for 5 hours at trial. (Esner Decl. 2.) Thus, the fee award is based on an initial request of 63.4 hours billed at the hourly rate.

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III. RULING

For the foregoing reasons, Plaintiff's Motion is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff shall recover attorneys' fees in the amount of **\$579,400** and liquidated damages in the amount of **\$50,000**. The Judgment is hereby amended accordingly.

IT IS SO ORDERED.

cc: fiscal

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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VALLABHAPURAPU, et al.,
Plaintiffs,
v.
BURGER KING CORPORATION,
Defendant

No. C 11-00667 WHA

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
SETTLEMENT; MOTION FOR AN
AWARD OF ATTORNEY'S FEES
AND COSTS**

INTRODUCTION

This is an ADA disability-access class action alleging barriers to access on behalf of mobility-impaired customers of restaurants in California leased by defendant Burger King Corporation. The parties have filed a joint motion for final approval of the settlement. Class counsel also requests attorney's fees and litigation costs and expenses. For the reasons explained below, final approval of the proposed settlement is **GRANTED**. Plaintiffs' motion for attorney's fees and costs is **GRANTED**.

STATEMENT

This action is the second part of a class action originally asserted against Burger King Corporation. Plaintiffs alleged that restaurants that Burger King Corporation leases to its franchisees in California violated the Americans with Disabilities Act, the Unruh Civil Rights Act, and the California Disabled Persons Act. Plaintiffs alleged that Burger King violated state

EXHIBIT D

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1 and federal regulations by pursuing discriminatory policies or practices that resulted in unlawful
2 architectural or design barriers which denied customers who use wheelchairs or scooters access
3 to services at these Burger King restaurants.

4 In the first part of the litigation, *Castaneda v. Burger King Corporation*, No. 08-04262
5 WHA, ten classes were certified as to ten of the alleged non-compliant restaurants. The parties
6 reached a class settlement, final approval of which was granted by this Court in July 2010.

7 Plaintiffs then filed this action in February 2011 against Burger King. The complaint in
8 this action brings the same claims and asserts class action allegations as to the remaining 86
9 restaurants not included in the *Castaneda* settlement. Plaintiffs reached a settlement agreement
10 with Burger King regarding the remaining 86 restaurants in this action.

11 The proposed class action settlement provides for significant injunctive relief and
12 damages. Specifically, the injunctive relief includes all of the measures agreed to in *Castaneda*,
13 including the elimination of all accessibility barriers and the use of mandatory checklists with
14 specific accessibility items for remodeling, alterations, repairs, and maintenance. An additional
15 remedial measure not included in the *Castaneda* settlement is that Burger King will include in its
16 manual to its franchisees the recommendation that franchisees check the force required to open
17 all public exterior and restroom doors twice per month to ensure that they do not require more
18 than five pounds of pressure to open. The proposed settlement provides for a cash payment of
19 \$19,000,000 to satisfy and settle all claims for damages, as well as any attorney’s fees and costs
20 awarded (Settlement Agreement ¶ 9.1.1). The settlement agreement provides that it “does not in
21 any way affect the rights, obligations, or restaurants at issue in the *Castaneda* Settlement” (*id.* at
22 ¶ 1.5). Of the 86 restaurants originally at issue, the injunctive relief applies to the 77 Burger
23 King restaurants that are still in business and are leased by Burger King to franchisees in
24 California.

25 After reviewing the proposed class settlement and revising the proposed notice forms, the
26 Court directed plaintiffs to give notice to class members so that a fairness hearing could be held.
27 A “short-form notice” was approved, which was required to be posted for 30 calendar days at
28 each of the restaurants covered by the class certification order. A “long-form notice” was also

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1 approved, which was to be sent out to existing damage claimants and to northern California
2 disability rights groups. A fairness hearing was held on October 25, 2012 and addressed (1)
3 whether the proposed settlement should be approved, and (2) the amount of fees and costs to be
4 awarded to class counsel from the settlement fund.

5 The deadline for class members to object or opt out of the settlement was September 17,
6 2012. Class members can opt in to receive monetary damages by November 15. Each damages
7 claimant is required to complete a claim form documenting his or her eligible visits to one of the
8 86 restaurants where he or she encountered a barrier to access. As in *Castaneda*, the proposed
9 settlement provides that monetary awards to each damages claimant will be distributed pro rata
10 based on the total number of visits by each damages claimant, with a maximum number of six
11 visits for which each claimant may obtain recovery. Class members who do not opt in to receive
12 damages claims do not release their rights to pursue such damages claims separately.

13 Plaintiffs also move for a combined \$4,823,082.58 in attorney’s fees and litigation costs
14 and expenses, consisting of reimbursement of \$230,776.77 in litigation costs and expenses, and
15 \$4,592,305.81 in attorney’s fees. To provide class members with an opportunity to review and
16 comment on the application for an award of attorney’s fees and costs, class counsel posted the
17 application on their website three weeks prior to the September 17 object/opt-out deadline (Lah
18 Decl. ¶ 7).

19 ANALYSIS

20 This order first explains why the pending settlement is fair, reasonable and adequate
21 under FRCP 23(e) and *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (setting
22 forth the factors to be considered when evaluating class action settlements). Next, this order
23 discusses why the awarded attorney’s fees are reasonable.

24 1. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE.

25 Having considered the terms of the settlement agreement, proposed plan of distribution,
26 and adequacy of notice to class members, and having considered the motion for final approval
27 of the settlement agreement, the declarations submitted therewith, oral argument by counsel,
28 and all other documents of record in this matter, this order holds that the settlement agreement

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1 is in the best interests of the class and is fair, reasonable, and adequate under the factors set forth
2 in *Hanlon*.

3 No objections to the settlement have been filed or received by counsel or the claims
4 administrator. One class member opted out (Keough Decl. ¶¶ 14–15). Class counsel attempted
5 to contact the individual several times and confirmed that she was not interested in participating
6 in the settlement (Lah Decl. ¶ 6). The settlement agreement provides for injunctive relief,
7 including the elimination of alleged accessibility barriers, the use of mandatory checklists with
8 specific accessibility items for remodeling, alterations, repairs and maintenance, and the
9 monitoring of compliance. Burger King will also include in its manual a guideline that
10 franchisees should check to ensure the appropriate force is required to open public exterior and
11 restroom doors. The settlement agreement provides for the Court to retain jurisdiction to enforce
12 the terms of settlement until October 26, 2016, four years after the settlement agreement has
13 been finalized.

14 The settlement also provides for a cash payment of \$19,000,000 to the settlement class.
15 Monetary awards to each claimant in the settlement class will be distributed pro rata based on the
16 total number of visits by each damages claimant to one of the 86 restaurants where he or she
17 encountered a barrier, with a maximum number of six visits for which each damages claimant
18 can obtain recovery. Each of these damage claimants must complete a claim form documenting
19 his or her eligible visits. Payment for the costs of notifying and administering the settlement up
20 to \$100,000 shall be paid by class counsel’s awarded attorney’s fees, while costs above those
21 amounts shall come from the settlement fund.

22 The class administrator reported that, as of October 11, 620 individuals had submitted
23 claim forms to recover damages. The class administrator estimated that, assuming a net
24 settlement fund of \$14,250,000, the average award value is \$22,983.87 per processed claim,
25 \$1,253.62 per store visit based on a raw store visit count, and \$4,968.61 per store visit based on
26 an adjusted store visit count (limiting the number of eligible visits per claimant to six visits)
27 (Keough Decl. ¶ 16). The parties state that, if the numbers reported by the claims administrator
28 do not change significantly, the average recovery per claimant will be 50 percent above the

1 average recovery in *Castaneda* (Br. 12–13). At the final fairness hearing, class counsel stated
2 that as of October 22, 677 individuals have submitted claim forms to recover damages.

3 Accordingly, final approval of the settlement and plan of allocation is hereby GRANTED.

4 **2. ATTORNEY’S FEES AND COSTS.**

5 Despite the settlement agreement and defendant’s acquiescence to the attorney’s fees
6 sought, a court must still ensure that the attorney’s fees and costs awarded are “fair, reasonable,
7 and adequate.” *See Staton v. Boeing, Co.*, 327 F. 3d 938, 963–64 (9th Cir. 2003). Common fund
8 fees, as we have here, are consistent with the “American Rule” (*i.e.*, that each party pays for its
9 own litigation expenses), and “a litigant or lawyer who recovers from the common fund for the
10 benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
11 the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

12 District courts in this circuit may use two different approaches to gauge the
13 reasonableness of a requested fee award under the traditional common-fund approach. The first
14 is the lodestar method, whereby a reasonable number of hours is multiplied by a reasonable
15 hourly rate. The lodestar may include a risk multiplier to enhance the fees under certain
16 circumstances, in which a court considers “the quality of the representation, the benefit obtained
17 for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.”
18 *Hanton*, 150 F.3d at 1026. Our court of appeals, however, also allows a calculation based upon a
19 percentage of the common fund. *See Staton*, 327 F.3d at 967–68. The benchmark percentage is
20 25 percent. *See Hanton*, 150 F.3d 1011, 1026. Here, the requested \$4,592,305.81 in attorney’s
21 fees equals approximately 25 percent of the settlement fund, after costs.

22 In *Castaneda*, class counsel reduced their lodestar by \$1,106,625.35, representing over
23 4,500 hours for work attributable to the 86 restaurants covered by the current settlement
24 (*Castaneda* Dkt. No. 346 ¶ 41; Fox Decl. ¶ 39). After *Castaneda*, class counsel spent an
25 additional 5,568.53 hours on the current settlement, after exercising billing judgment and
26 deleting 557.6 hours (Lee Decl., Exh. B). In total, class counsel claim to have expended over ten
27 thousand hours in this six-year action (*ibid.*). After applying what they assert are reasonable
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1 rates to those hours (ranging from \$335 to \$825 for the attorneys, and from \$225 to \$275 for
2 paralegals and other staff), counsel calculate a lodestar of \$3,546,721.60 (Br. 12).

3 Counsel request that this order enhance the total fee award by applying a multiplier of
4 1.29, which this order finds warranted given “the quality of the representation, the benefit
5 obtained for the class, the complexity and novelty of the issues presented, and the risk of
6 nonpayment” in this action. *Hanlon*, 150 F.3d at 1029. The determinative factor, however, is
7 the benefit to the class. Even after the requested attorney’s fees and costs are deducted, the
8 monetary damages of over \$14 million — which, according to plaintiffs, is the largest total
9 recovery amount ever obtained in a disability access case — is only part of the relief obtained for
10 class members. As noted above, the settlement also provides for considerable measures of
11 injunctive relief at the restaurants at issue to eliminate accessibility barriers. Because the
12 deadline for claims is November 15, 2012, the average monetary recovery per damages claimant
13 is yet unknown; however, the \$14 million net settlement fund, by itself, is very good. Based on
14 the current number of processed claims, class counsel estimates that the average recovery per
15 claimant will be nearly 50 percent above the average recovery in *Castaneda* (Br. 12–13).
16 Accordingly, the benefits provided to the class warrant the requested fee award. Class counsel’s
17 request for \$4,592,305.81 in attorney’s fees is fair, reasonable, and adequate.

18 Plaintiffs’ counsel seek \$230,776.77 in litigation costs and expenses. This order finds
19 that the costs and expenses, as detailed by class counsel, are reasonable. Additionally, plaintiffs’
20 counsel have not included in this amount the \$100,000 in claims administration costs that they
21 have agreed to pay out of their recovered attorney’s fees. For the reasons stated above, the
22 request for attorney’s fees and reimbursement of litigation costs and expenses is **GRANTED**.

23 **CONCLUSION**

24 Accordingly, it is hereby ordered as follows:

25 1. The Court hereby finds that the settlement is fair, reasonable, and adequate as to
26 the class, plaintiffs, and defendants, that it is the product of good faith, arms-length negotiations
27 between the parties, and that the settlement is consistent with public policy and fully complies
28 with all applicable provisions of law. The breadth of the release to be imposed on the absent

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1 class members is sufficiently narrow. Absent class members who have not opted in to pursue
2 damages claims release only non-monetary claims relating to the accessibility of the restaurants
3 covered by the settlement based on conduct preceding final approval of the settlement
4 agreement. They do not release any claims for monetary damages. The final settlement is
5 therefore approved.

6 2. The notice given to class members and potential damages claimants was the best
7 notice practicable under the circumstances, was valid, gave due and sufficient notice to all class
8 members, and complied fully with the Federal Rules of Civil Procedure, due process, and all
9 other applicable laws. A long-form notice was mailed to all known damages claimants described
10 in the proposed settlement. A short-form notice was posted for a period of 30 calendar days in
11 all Burger King restaurants covered by the settlement, which provided information for obtaining
12 the long-form notice and opt-in/opt-out form. The short-form notice was also mailed to northern
13 California disability rights groups. The long-form and short-form notices provided information
14 regarding the manner in which class members could object to or participate in the settlement and
15 the manner in which class members could opt out of the class. A full and fair opportunity was
16 afforded to class members to participate in the proceedings to determine whether the proposed
17 settlement should be given final approval. Accordingly, this order holds that all class members
18 who did not exclude themselves from the settlement by filing a timely request for exclusion are
19 bound by this settlement order and judgment.

20 3. The Court retains continuing jurisdiction over the class action, named plaintiffs,
21 the class, and defendant for four years (until October 26, 2016) from the date of entry of this
22 order in order to supervise the implementation, enforcement, construction and interpretation of
23 the revised settlement agreement and this order.

24 4. The Court hereby awards to plaintiffs' counsel attorney's fees of \$4,592,305.81 and
25 \$230,776.77 in litigation costs and expenses, to be paid from the settlement fund. Plaintiffs'
26 counsel shall be awarded the \$230,776.77 as well as 50 percent of the attorney's fees now; the
27 remaining 50 percent may be recovered only after counsel certifies that the fund is completely
28

1 wound up. If problems do arise and if management of this fund so necessitates, any shortfall in
2 funds to pay class members may be deducted from the unpaid attorney's fees.

3 5. Damages claimants who have already opted in or intend to opt in to receive monetary
4 damages have until November 15, 2012, to complete, sign, and submit their claim forms for
5 shares of the damages fund. Eligibility for payments from the net settlement fund shall be
6 determined based on the procedure set forth in section nine of the settlement agreement.

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8 **IT IS SO ORDERED.**

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10 Dated: October 26, 2012.

FOR PUBLIC RELEASE

11 WILLIAM ALSUP
12 UNITED STATES DISTRICT JUDGE

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United States District Court
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LONG BEACH AREA PEACE NETWORK, et al., Plaintiffs, v. CITY OF LONG BEACH, Defendant.))))))))))))	NO. CV 04-08510 SJO (SSx) ORDER GRANTING PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AGAINST DEFENDANT [Docket No. 56]
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This matter is before the Court on Plaintiffs Long Beach Area Peace Network and Diana Mann’s (collectively, “Plaintiffs”) Motion for Award of Attorneys’ Fees and Costs, filed April 15, 2010. Defendant City of Long Beach (“Defendant”) filed an Opposition to which Plaintiffs replied. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for May 24, 2010. See Fed. R. Civ. P. 78(b). Because of the following reasons, Plaintiffs’ Motion is GRANTED.

I. BACKGROUND

Defendant adopted an ordinance, codified in §§ 5.60 *et seq.*, of the Long Beach Municipal Code (“LBMC”), that established a permit scheme for parades and assemblies held in the City of Long Beach (the “Ordinance”). Plaintiffs filed a “facial challenge” to the Ordinance, seeking: (1) declaratory and injunctive relief; (2) compensatory damages; and (3) attorneys’ fees. On November 15, 2004, the Court permanently enjoined Defendant from enforcing the Ordinance

1 on the grounds that the Ordinance constituted an unconstitutional restraint on speech and
2 assembly. Defendant subsequently appealed the Court's Order to the Ninth Circuit.

3 In *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011 (9th Cir. 2009),
4 the Ninth Circuit affirmed in part and reversed in part, and remanded the issue of whether the four
5 unconstitutional provisions could be severed. Defendant filed a petition for rehearing *en banc*,
6 which was denied. Defendant then petitioned for a Writ of Certiorari with the United States
7 Supreme Court, which was also denied.

8 On March 15, 2010, the Court heard argument on whether the unconstitutional provisions
9 of the Ordinance were severable and concluded on April 1, 2010, that the provisions were not
10 severable and thus the entire Ordinance was invalid. (Docket ("Dkt.") No. 43.) Plaintiffs now
11 move for attorneys' fees and costs. (See *generally* Pls.' Mot. for an Order Awarding Attorneys'
12 Fees and Costs Pursuant to 42 U.S.C. § 1983 and California Code of Civil Procedure § 1021.5
13 ("Pls.' Mot.").)

14 II. DISCUSSION

15 A. Attorneys' Fees

16 42 U.S.C. § 1988 states that "[i]n any action or proceeding to enforce a provision of [section
17 1983] . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney[s']
18 fee as part of the costs" 42 U.S.C. § 1988. In determining the amount of attorneys' fees to
19 be awarded, the court must first determine the lodestar figure, which is calculated by multiplying
20 the number of hours reasonably expended on the litigation by a reasonable hourly rate. See
21 *Hensley v. Eckerhart*, 461 U.S. 424, 434-35 (1983). The lodestar figure is presumptively
22 reasonable. See *Quesada v. Thomason*, 850 F.2d 537, 539 (9th Cir. 1988). Hours are not
23 reasonably expended if they are "excessive, redundant, or otherwise unnecessary." *Hensley*, 461
24 U.S. at 434. The reasonable hourly rate is the rate "prevailing in the community for similar work
25 performed by attorneys of reasonably comparable skill, experience, and reputation." *Blum*
26 *v. Stenson*, 465 U.S. 886, 895 n.11 (1984). Once calculated, the court may then adjust the
27 lodestar amount up or down based on a number of factors, including:

1 (1) [t]he time and labor required; (2) [t]he novelty and difficulty of the
2 questions; (3) [t]he skill requisite to perform the legal services
3 properly; (4) [t]he preclusion of other employment due to acceptance
4 of the case; (5) [t]he customary fee; (6) [t]he contingent or fixed nature
5 of the fee; (7) [t]he limitations imposed by the client or the case; (8)
6 the amount involved and the results obtained; (9) [t]he experience,
7 reputation, and ability of the attorneys; (10) [t]he undesirability of the
8 case; (11) [t]he nature of the professional relationship with the client;
9 and (12) [a]wards in similar cases.

10 *Intel Corp. v. Terabyte Int'l*, 6 F.3d 614, 622 (9th Cir. 1993). In seeking attorneys' fees under this
11 method, "the fee applicant has the burden of producing satisfactory evidence, in addition to the
12 affidavits of its counsel, that the requested rates are in line with those prevailing in the community
13 for similar services . . . and that the claimed number of hours is reasonable" *Id.* at 622-23.

14 Plaintiffs allege that they are entitled to attorneys' fees and costs as prevailing parties under
15 42 U.S.C. § 1983. (Pls.' Mot. 2:13-16.)

16 1. Reasonableness of Hourly Rate

17 As established in *Blum v. Stenson*, the reasonableness of an hourly rate is "calculated
18 according to the prevailing market rates in the relevant community, regardless of whether plaintiff
19 is represented by private or nonprofit counsel [T]he rates should be in line with those
20 prevailing in the community for similar services by lawyers of reasonably comparable skill,
21 experience, and reputation." *Blum*, 465 U.S. at 896 n.11. Plaintiffs have submitted affidavits and
22 cases in support of the reasonableness of the hourly rate charged by Plaintiffs' attorneys. (Pls.'
23 Mot., Ex. 3-8; Pls.' Mot., Decl. of Barrett Litt in Support of Plaintiffs' Motion for an Order Awarding
24 Attorneys' Fees and Costs.) Accordingly, the rates are presumed to be reasonable unless
25 Defendant can show that the rates are not in line with those prevailing in the community. See
26 *Blum*, 465 U.S. at 896 n.11.

27 Defendant has not presented sufficient evidence to refute the figures provided by Plaintiffs,
28 instead relying on references to the United States Attorney's Office ("USAO") *Laffey* Matrix and

1 the Altman Weil Survey of Law Firm Economics.¹ (See generally Mem. of P. & A. in Opp'n to Pls.'
2 Mot. for Attorneys' Fees ("Def.'s Opp'n").) However, neither alternative is representative of the
3 "prevailing market rates in the relevant community" of Los Angeles. *Blum*, 465 U.S. at 896 n.11.
4 Since neither the *Laffey* Matrix nor the Altman Weil Survey are applicable, Defendant has failed
5 to rebut the presumption of reasonableness of Plaintiffs' claimed rates. See *id.*

6 After review of the evidence presented by the parties in support of fees, the Court finds that
7 the requested rates are reasonable for each of the attorneys, clerks, and paralegals.

8 2. Reasonableness of Claimed Number of Hours

9 Hours are not reasonably expended if they are "excessive, redundant, or otherwise
10 unnecessary." *Hensley*, 461 U.S. at 434. Moreover, the "fee applicant bears the burden of
11 documenting the appropriate hours expended in the litigation and must submit evidence in support
12 of these hours worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). Once the fee
13 applicant has met that burden, the opposing party "has a burden of rebuttal that requires
14 submission of evidence to the district court challenging the accuracy and reasonableness of the
15 hours charged." *Id.* at 1397-98.

16 Plaintiffs have submitted a sufficiently detailed breakdown of time spent on various levels
17 of the litigation. (Pls.' Mot. 6:3-25.) Plaintiffs allege that they have exercised billing judgment by
18 excluding the time spent preparing briefs in Small Claims Court and for issues that were ultimately
19 unsuccessful. See *Hensley*, 461 U.S. at 434; Pls.' Mot. 5:10-20. In total, Plaintiffs contend that
20 they have already eliminated 46 hours from Ms. Thornton's time and 41 hours from Ms. Sobel's
21 hours. (Pls.' Mot. 5:10-20.)

22 However, Defendant argues that the hours billed are still unreasonable and must be
23 reduced. The Court will address each of Defendant's arguments separately.

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26 _____
27 ¹ The USAO *Laffey* Matrix is a publication based on District of Columbia averages of hourly
28 rates charged by attorneys, whereas the Altman Weil Survey is a national average of hourly rates
charged by attorneys in the United States. The Court notes that Defendant failed to provide the
Laffey Matrix, as well as the pertinent portions of the Altman Weil Survey.

1 a. Ms. Sobel's Use of an Associate

2 Defendant wishes to exclude all of Ms. Thornton's involvement in the appellate process
3 when calculating attorneys' fees. (Opp'n to Appellees' Application for Attorneys' Fees attached
4 as Ex. 1 to Def.'s Opp'n ("Ex. 1").) However, Defendant's request implies that Defendant would
5 have preferred Ms. Sobel to conduct the same basic research and drafting tasks done by
6 Ms. Thornton, but at more than three times the billing rate. (Pls.' Reply to the Opp'n to Attorneys'
7 Fees and Costs ("Pls.' Reply") 6:13-24.) Had Ms. Sobel completed all of the work done by
8 Ms. Thornton, Plaintiffs' fees would be even higher. Accordingly, the Court finds that Plaintiffs' use
9 of an associate was neither excessive nor unwarranted.

10 b. Ninth Circuit Appeal

11 Defendant alleges that Ms. Sobel's general experience in First Amendment law and her
12 involvement as lead attorney in *Santa Monica Food Not Bombs v. Santa Monica*, 450 F.3d 1022
13 (9th Cir. 2006), necessarily resulted in duplicitous research. (Def.'s Opp'n 2:24-25.) However, the
14 Court finds that any duplicitous work was done out of necessity, especially given the fact that
15 litigation occurred over several years. (Pls.' Reply 2:9-10.)

16 Defendant also contends that a reduction in attorneys' fees is warranted because Plaintiffs
17 were only successful on four out of nine issues. (Ex. 1.) This is irrelevant because Plaintiffs were
18 ultimately successful in invalidating the entire Ordinance. (*See generally* Pls.' Reply.)
19 Accordingly, the Court finds this argument is without merit.

20 Alternatively, Defendant contends that Plaintiffs' failure to follow Ninth Circuit Rule 28-2.6²
21 resulted in unnecessary supplemental briefing in the present case because the "matters could
22 have potentially been consolidated and the necessity and expense of supplemental briefing could
23 have been avoided." (Ex. 1.) There is no evidence that the Ninth Circuit would have consolidated
24 the matters. Accordingly, the Court finds that this argument lacks merit. After reviewing the
25 evidence presented by both parties, the Court finds no reduction in attorneys' fees is necessary

26
27 ² Ninth Circuit Rule 28-2.6 states in pertinent part: "[e]ach party shall identify in a statement
28 . . . any known related case pending in [the Ninth Circuit] Cases are deemed related if they
. . . raise the same or closely related issues" Fed. R. App. P. 28-2.6.

1 for the appellate process. Accordingly, Plaintiffs are awarded \$119,082.50 in attorneys' fees for
2 work done during the appeals process.

3 c. United States Supreme Court Briefing

4 Defendant alleges that spending 141.1 hours on Plaintiffs' Brief in opposition to Defendant's
5 Petition for Writ of Certiorari is excessive because Plaintiffs merely quoted and paraphrased
6 liberally from the Ninth Circuit opinion and provided little independent legal analysis. (Def.'s Opp'n
7 4.) However, Plaintiffs allege that it had to research numerous new cases and issues. (Pls.' Reply
8 6:25-28.) Furthermore, Plaintiffs argue that 19 months passed between the time Plaintiffs filed
9 their Opposition to the petition for rehearing *en banc* in May 2008 to the time they filed their
10 Response to the Petition for Certiorari in December 2009. (Pls.' Reply 7:22-24.) Thus, although
11 the work may have been duplicitous, given the time lapse between actions, the Court finds that
12 any duplication was necessary. The Court finds that no reduction in attorneys' fees is necessary.
13 Accordingly, the Court finds the sum of \$71,322.50 to be appropriate, and thus awards such an
14 amount for matters related to the Petition for Certiorari.

15 d. District Court Proceedings

16 Defendant alleges that Plaintiffs are not entitled to collect attorneys' fees for the original
17 district court proceedings because they failed to file a timely application for attorneys' fees
18 pursuant to Federal Rule of Civil Procedure ("Rule") 54(d)(2)(B)(i).³ See Fed. R. Civ. P.
19 54(d)(2)(B)(i). However, Local Rule 54-12 permits the filing of a motion for attorneys' fees fourteen
20 days after any final order is issued. See Local Rule 54-12.⁴ Plaintiffs contend that the term "final
21 order" means after the time for filing an appeal has expired "such that there is no longer any
22 possibility that the district court's judgment is open to attack." *Al-Harbi v. Immigration and*
23 *Naturalization Serv.*, 284 F.3d 1080, 1082 (9th Cir. 2002). The Court issued its Order denying
24

25 ³ Rule 54(d)(2)(B)(i) states that a motion for attorneys' fees must "be filed no later than 14
26 days after the entry of judgment[.]" Fed. R. Civ. P. 54(d)(2)(B)(i).

27 ⁴ Local Rule 54-12 states that "[a]ny motion or application for attorneys' fees shall be
28 served and filed within fourteen (14) days after the entry or judgment or other final order, unless
otherwise ordered by the Court."

1 severability on April 1, 2010, and the instant Motion for attorneys' fees was filed on April 14, 2010.
2 (See Dkt. No. 55; Dkt. No. 56.) Since the instant Motion was filed within 14 days from the final
3 Order denying severability, Plaintiffs are not precluded from seeking attorneys' fees for the original
4 district court proceedings. Accordingly, Plaintiffs are awarded \$67,405.00 for work done for the
5 original district court proceedings.

6 e. Severability and Post-Appellate Proceedings

7 Defendant alleges that Ms. Sobel's involvement in *Long Beach Lesbian & Gay Pride, Inc.*
8 *v. City of Long Beach*, 17 Cal. Rptr. 2d 861 (Cal. App. 1993), a case dealing with a prior version
9 of the same city ordinance as the instant case, necessarily means that some hours expended
10 working on the severability hearings in the instant case are duplicitous. (Def.'s Opp'n 5:3-12.)
11 *Long Beach Lesbian & Gay Pride, Inc.* was decided in 1993, almost two decades ago and a whole
12 decade before the commencement of the instant litigation. Over such a long period of time, laws
13 may change and work product may become stale. See *Moreno v. City of Sacramento*, 534 F.3d
14 1006, 1112 (9th Cir. 2008). At a bare minimum, an attorney "needs to get up to speed with the
15 research previously performed." *Id.* Thus, the Court finds Defendant's argument without merit.
16 Accordingly, the Court finds the sum of \$19,690.00 to be a reasonable sum of attorneys' fees for
17 the severability hearing and post-appeal proceedings.

18 f. Work on the Motion for Attorneys' Fees and Costs

19 Defendant argues that the hours billed for the instant Motion are excessive because
20 Plaintiffs only had to include a minor amount of additional information and thus much of the work
21 was duplicative. (Def.'s Opp'n 5:20-24.) Plaintiffs initially sought 17.9 hours, but request an
22 additional 18.4 hours for time spent on the Reply. Plaintiffs are not required to travel to, appear
23 at, or prepare for a hearing regarding this matter. Accordingly, Plaintiffs' request for fees for 4.5
24 hours of time for such matters is denied. As such, total hours billable for work done regarding the
25 instant Motion is 31.8 hours at \$725 per hour for a total of \$23,055.

26 B. Costs

27 The Court is unable to locate the Bill of Costs that Plaintiffs allegedly transferred from the
28 Ninth Circuit, as it is not attached as Exhibit 15 to the Declaration of Ms. Sobel as Plaintiffs claim.

1 (Decl. of Carol A. Sobel in Support of Mot. for an Order Awarding Attorneys' Fees and Costs ¶ 20.)
2 The only enumerated costs that can be found are in Ms. Sobel's Supplemental Declaration
3 attached to Plaintiffs' Reply. (Pls.' Reply, Supplemental Decl. of Carol A. Sobel ¶ 12.)
4 Accordingly, Plaintiffs are awarded \$190.68 for out-of-pocket costs. (Pls.' Reply, Supplemental
5 Decl. of Carol A. Sobel ¶ 12.)

6 III. RULING

7 For the foregoing reasons, Plaintiffs' Motion for an Order Awarding Attorneys' Fees and
8 Costs is GRANTED. Accordingly, the Court awards Plaintiffs attorneys' fees and costs in the
9 amount of \$300,745.68.

10
11 IT IS SO ORDERED.

12 Dated: July 2, 2010.

13  FOR PUBLIC RELEASE

14
15 S. JAMES OTERO
16 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	ED CV 08-00503 ABC (RCx) ED CV 08-00511 ABC (RCx) ED CV 08-00512 ABC (RCx)	Date	February 22, 2010
Title	<u>Riverside County Department of Mental Health v. A.S., et al.</u>		

Present: The Honorable	Audrey B. Collins, Chief Judge		
Angela Bridges	Not Present	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
None	None		

Proceedings: ORDER GRANTING MOTION FOR ATTORNEYS' FEES AND DENYING WITHOUT PREJUDICE MOTION FOR COSTS (In Chambers)

Pending before the Court is the motion for attorneys' fees and costs filed by Defendants and Consolidated Plaintiffs A.S. and Monica Valentine ("Defendants). Mot. (Docket # 103).¹ Plaintiff Riverside County Department of Mental Health ("RCDMH") filed an opposition and Defendants filed a reply. Opp'n (Docket # 113); Reply (Docket # 116). The Court finds the matter appropriate for resolution without oral argument. Local Rule 7-15.² Having considered the materials submitted by the parties and the case file, and for the reasons indicated below, the Court **GRANTS** in part and **DENIES** in part the Motion.

I. BACKGROUND

This is a case brought under the federal Individuals with Disabilities Education Act ("IDEA"), in which the Court affirmed the ALJ ruling that Plaintiff and Riverside Unified School District (the "District") were required to place A.S. at the National Deaf Academy. See Order Affirming Administrative Law Judge's Decision (Docket # 109).³ Defendants filed a motion to recover attorneys'

¹ Unless otherwise noted, all references to the docket refer to the docket for Case No. ED CV 08-0503 ABC (RCx).

² The hearing previously set for the motion was vacated pending reassignment. December 10, 2009 Minute Order (Docket # 120). This case was previously assigned to Judge Larson, but was transferred to Chief Judge Collins.

³ Judge Larson's order provides an extensive discussion of the background of the case, which the Court will not repeat here.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	ED CV 08-00503 ABC (RCx) ED CV 08-00511 ABC (RCx) ED CV 08-00512 ABC (RCx)	Date	February 22, 2010
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fees and costs. That motion seeks to recover for work performed by attorneys with the Disability Rights Legal Center (“DRLC”) and Quinn Emanuel Urquhart Oliver & Hedges, LLP (“Quinn Emanuel”) in the amount of \$41,685.25 for work performed during the due process proceeding, \$54,793.75 for work performed during the consolidated federal appeal, and \$16,597.50 for work performed in connection with this fees motion. See, e.g., McGunigle Decl. Ex. G; McGunigle Reply Decl. Ex. A. Defendants also seek to recover certain costs incurred during those proceedings. See McGunigle Decl. Ex. G; McGunigle Reply Decl. Ex. A.

II. REQUEST FOR ATTORNEYS’ FEES

Litigants in the United States generally pay their own attorneys’ fees, regardless of the outcome of a case, although Congress may provide otherwise by statute. Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008). The IDEA provides that the Court “may award reasonable attorneys’ fees as part of the costs . . . to a prevailing party who is the parent of a child with a disability.” 20 U.S.C. § 1415(i)(3)(B)(i).⁴ In calculating an award of reasonable attorneys’ fees in IDEA cases, courts use the familiar lodestar calculation set forth in Hensley v. Eckerhart, 461 U.S. 424 (1983). See Aguirre v. Los Angeles Unified School Dist., 461 F.3d 1114, 1121 (9th Cir. 2006). The lodestar consists of multiplying the number of hours reasonably expended on the matter by a reasonable hourly rate. Camacho, 523 F.3d at 978. Once the lodestar is calculated, it is presumed to be reasonable. Id. But the Court may adjust it based on the evaluation of additional factors not subsumed in the lodestar calculation. Id.

The RCDMH makes three arguments in challenging Defendants’ proposed lodestar. First, it argues that the hourly rate sought by Heather McGunigle is excessive. Second, it argues that all work performed by Quinn Emanuel following issuance of the administrative decision was unnecessary. Third, it argues that the proposed lodestar should be reduced to reflect Defendants’ settlement with the district. The Court will address each argument in turn. For the reasons discussed below, the Court finds that none of the RCDMH’s arguments have merit and that Defendants may recover for all fees sought.

A. HOURLY RATE FOR HEATHER MCGUNIGLE

Reasonable hourly rates are based upon the “prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel.” Blum v. Stenson, 465 U.S. 886, 895 (1984). The relevant community is the “forum in which the district court sits.” Barjon v. Dalton, 132 F.3d 496, 500 (9th Cir. 1997). And the prevailing rate is the “rate prevailing in the

⁴ “A prevailing party is one who succeeds on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.” Weissburg v. Lancaster School Dist., 591 F.3d 1255, 1258 (9th Cir. 2010) (quoting Van Duyn v. Baker School Dist., 5J, 502 F.3d 811, 825 (9th Cir. 2007)) (internal alterations and quotations omitted). The RCDMH does not dispute that Defendants are the prevailing parties in this matter.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	ED CV 08-00503 ABC (RCx) ED CV 08-00511 ABC (RCx) ED CV 08-00512 ABC (RCx)	Date	February 22, 2010
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community for similar work performed by attorneys of comparable skill, experience, and reputation.” Id. at 502 (quoting Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1986)). “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990).

The RCDMH quibbles only with the rate sought for Heather McGunigle, who is a 2005 law school graduate claiming a rate of \$375 per hour.⁵ This Court recently approved that rate for another 2005 law school graduate working for the DRLC in this district based on evidence that is the same or very similar to that presented here. See Lauderdale v. City of Long Beach, Case No. CV 08-979 ABC (JWJx), Order Re: Attorney Fees and Costs at 10-11 (C.D. Cal. January 11, 2010) (awarding rate of \$375 per hour to DRLC attorney who graduated law school in 2005 based on, inter alia, declarations from Laurence Paradis and Barrett Litt). For the same reasons articulated in Lauderdale, the Court finds the rate claimed by Ms. McGunigle to be in accordance with the prevailing rate in the community for similar work performed by attorneys of similar skill and experience.⁶

B. WORK PERFORMED BY QUINN EMANUEL FOLLOWING ISSUANCE OF THE ADMINISTRATIVE DECISION

The RCDMH argues that all work done by Quinn Emanuel after the issuance of the administrative decision was unnecessary, so roughly 43 hours billed by Quinn Emanuel should be excluded entirely from the lodestar. Opp’n at 7-10; see also McGunigle Decl. Ex. G (documenting 85.4 hours billed by Kristelia Garcia, half of which it seeks to recover for from the RCDMH). Hours not “reasonably expended” are excluded from the lodestar. Hensley, 461 U.S. at 434. “By and large, the court should defer to the winning lawyer’s professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.” Moreno v.

⁵ Ms. McGunigle graduated from law school in December 2004. The DRLC appears to treat her as a 2005 graduate for billing purposes, however. See Mot. at 20, n.5 (“she is effectively a 2005 law school graduate”).

⁶ The RCDMH presented countervailing evidence in the form of an order awarding fees for Ms. McGunigle’s services at a rate of \$255 per hour for work performed in 2007. See Pulido v. Rialto Unified School Dist., Case No. ED CV 07-0506 VAP (JCRx) (C.D. Cal. May 11, 2008) (Craig Decl. Ex. B); see also Parks Decl. at ¶ 7. Rates awarded to the particular attorney in another case can be probative of her reasonable hourly rate. See Cruz ex rel. Cruz v. Alhambra School Dist., 601 F. Supp. 2d 1183, 1194 (C.D. Cal. 2009). In this case, however, the Court has before it substantial evidence as to the 2009 rate for attorneys of Ms. McGunigle’s experience and expertise. The Court finds that evidence more persuasive than an order setting Ms. McGunigle’s rate for work performed in 2007.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	ED CV 08-00503 ABC (RCx) ED CV 08-00511 ABC (RCx) ED CV 08-00512 ABC (RCx)	Date	February 22, 2010
Title	<u>Riverside County Department of Mental Health v. A.S., et al.</u>		

City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008).

Here, Quinn Emanuel's hours were not unnecessary. Indeed, the RCDMH does not point to specific entries of unnecessary work performed by Quinn Emanuel. Instead, the RCDMH argues generally that the DRLC staff had sufficient federal civil litigation experience to adequately represent Defendants following the entry of the administrative decision. See Opp'n at 8-9. The RCDMH does not dispute any Quinn Emanuel fees incurred during the due process proceedings. Opp'n at 9 n.2. Thus, the RCDMH's argument appears to boil down to its belief that the case could have been staffed more efficiently by not having Quinn Emanuel attorneys continue working on the case beyond that point. Such speculation does not warrant a reduction in fees. See Moreno, 534 F.3d at 1114 ("the district court may not set the fee based on speculation as to how other firms would have staffed the case").

C. HOURS SPENT LITIGATION AGAINST THE DISTRICT

The RCDMH next argues that Defendants' proposed lodestar should be reduced to account for their settlement with the District. See Opp'n at 10-11. More particularly, the RCDMH requests that the total hours be halved. See Opp'n at 12. As their moving papers make clear, however, Defendants have already done precisely that:

[B]ecause [Defendants] have settled their case with Riverside Unified School District, I deducted in their entirety, all time entries on both Quinn Emanuel's and DRLC's billing statements that are exclusively attributable to Riverside Unified School District, and not to RCDMH. . . .

After making those deductions, I reduced the remaining totals by 50 percent, again, to account for [Defendants'] settlement with Riverside Unified School District. Some of the entries that were divided by half were exclusively attributable to RCDMH, and therefore this approach actually underestimates RDCHH's [sic] liability for fees. However, I made those deductions for ease of calculation and to account for any remaining arguable inefficiencies.

McGunigle Decl. at ¶¶ 25-26.⁷ Accordingly, the RCDMH's point is moot.

D. CONCLUSION ON FEES

⁷ In light of this clear explanation of Defendants' deductions made to reflect their settlement with the District, the Court is puzzled by the RCDMH's assertion that it "is unaware of any attempt by Defendants to offset the amount requested from RCDMH by the amounts received from the District." Opp'n at 10.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	ED CV 08-00503 ABC (RCx) ED CV 08-00511 ABC (RCx) ED CV 08-00512 ABC (RCx)	Date	February 22, 2010
Title	<u>Riverside County Department of Mental Health v. A.S., et al.</u>		

As noted above, the lodestar is presumptively reasonable. Camacho, 523 F.3d at 978. The Court has considered the additional factors that could militate in favor of adjusting the lodestar, and finds that none of them warrant any adjustment. Accordingly, the Court concludes that Defendants are entitled to recover attorneys' fees in the amount of their proposed lodestar: \$113,076.50.

III. REQUEST FOR COSTS

The RCDMH lastly argues that Defendants are not entitled to recover the \$2,627.79 in costs sought, asserting that the IDEA does not allow prevailing parties to recover costs. Opp'n at 11. The IDEA allows for the recovery of "reasonable attorneys' fees as part of the costs" to the parents of "a child with a disability" who is the "prevailing party." 20 U.S.C. § 1415(i)(3)(B)(i).⁸ The Supreme Court has provided guidance on the interpretation of this provision:

[Section] 1415(i)(3)(B) does not say that a court may award "costs" to prevailing parents; rather, it says that a court may award reasonable attorney's fees "as part of the costs" to prevailing parents. This language adds reasonable attorney's fees incurred by prevailing parents to the list of costs that prevailing parents are otherwise entitled to recover. This list of otherwise recoverable costs is obviously the list set out in 28 U.S.C. § 1920, the general statute governing the taxation of costs in federal court.

Arlington Cent. School Dist. Bd. of Edu. v. Murphy, 548 U.S. 291, 297-98 (2006); see also id. at 301 ("the term 'costs' in 20 U.S.C. § 1415(i)(3)(B), like the term in Rule 54(d), is defined by the categories of expenses enumerated in 28 U.S.C. § 1920"). Thus, Defendants are entitled to recover costs, but only to the extent allowed under Section 1920.

Unfortunately, neither party analyzes whether the costs claimed here are actually recoverable under Section 1920.⁹ Accordingly, to the extent Defendants would like to continue seeking costs, they must file a bill of costs with the Court Clerk within 10 days and attach this order. See Local Rule 54.

IV. CONCLUSION

⁸ The basis for Defendants' cost request appears to be Section 1415(i)(3)(B). See Mot. at 1; see also Reply at 8(citing Section 1415(g)(3)(B) in an apparent typographical error).

⁹ The Court expresses no opinion regarding whether the costs listed by Defendants in their moving papers are recoverable.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	ED CV 08-00503 ABC (RCx) ED CV 08-00511 ABC (RCx) ED CV 08-00512 ABC (RCx)	Date	February 22, 2010
Title	<u>Riverside County Department of Mental Health v. A.S., et al.</u>		

For the foregoing reasons, Defendants' request for attorneys' fees is **GRANTED** in the amount of \$113,076.50, and Defendants' request for costs is **DENIED** without prejudice to filing a bill of costs with the Court Clerk.

IT IS SO ORDERED.

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10 Attorneys for Defendants and Consolidated Plaintiff

11 **UNITED STATES DISTRICT COURT**

12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 RIVERSIDE COUNTY
14 DEPARTMENT OF MENTAL
15 HEALTH,

16 PLAINTIFF(S)

17 vs.

18 A.S., an individual; and MONICA
19 VALENTINE, an individual,

20 DEFENDANT(S)

Consolidated Case Nos. ED CV 08-
00503 SGL (Rx); ED CV 08-0511 SGL
(RCx)

21 **NOTICE OF MOTION AND**
22 **MOTION FOR AWARD OF**
23 **ATTORNEYS' FEES PURSUANT**
24 **TO 20 U.S.C. § 1415;**
25 **MEMORANDUM OF POINTS AND**
26 **AUTHORITIES**

[Declarations of HEATHER
MCGUNIGLE, SHAWNA L. PARKS,
AARON B. CRAIG, LAURENCE W.
PARADIS, BARRETT S. LITT, PAUL
VANDOREN; [Proposed] Order filed
concurrently herewith]

Date: August 10, 2009

Time: 10:00

Place: Courtroom 1

HON. STEPHEN G. LARSON

27
28 DEFENDANT/CONSOLIDATED PLAINTIFF MONICA VALENTINE MOTION FOR AWARD OF
ATTORNEYS' FEES

1 **CONSOLIDATED CASES:**

2 MONICA VALENTINE,

3 Plaintiff,

4 v.

5 RIVERSIDE UNIFIED SCHOOL
6 DISTRICT, a public entity;
7 RIVERSIDE COUNTY
8 DEPARTMENT OF MENTAL
9 HEALTH, and DOES 1-10, inclusive,

10 Defendants.

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DEFENDANT/CONSOLIDATED PLAINTIFF MONICA VALENTINE MOTION FOR AWARD OF ATTORNEYS’ FEES

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TABLE OF AUTHORITIES

Cases

Barlow-Gresham Union High Sch. Dist. No. 2 v. Mitchell, 940 F.2d 1280, 1286 (9th Cir. 1991)..... 10

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Bernardi v. Yeutter, 951 F.2d 971, 975 (9th Cir. 1991) 23

Blum v. Stenson, 465 U.S. 886, 895 (1984)..... 10, 18

Bouman v. Block, 940 F.2d 1211, 1236 (9th Cir. 1991)..... 16

Caudle v. Bristol Optical Co., Inc., 224 F.3d 1014, 1028 (9th Cir. 2000)..... 10

Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 768-69 (7th Cir. 1982), *cert. denied*, 461 U.S. 956, 103 S. Ct. 2428, 77 L.Ed.2d 1315 (1983)..... 19

City of Riverside v. Rivera, 477 U.S. 561, 581 (1986) 14

Clark v. City of Los Angeles, 803 F.2d 987, 992 (9th Cir. 1986)..... 23

County of San Diego v. Calif. Special Education Hearing Office, 93 F.3d 1458, 1468 (9th Cir. 1996)..... 13

Davis v. City and Ct. of San Francisco, 976 F.2d 1536, 1544 (9th Cir. 1992) 16

Dennis v. Change, 611 F.2d 1302, 1306 n.12 (9th Cir. 1980)..... 10, 18

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Johnson v. University College, 706 F.2d 1205, 1208 (11th Cir. 1983)..... 16

Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975)..... 11

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 19 1990)16
 20 *Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994).....13
 21 *Ustrak v. Fairman*, 851 F.2d 983, 988 (7th Cir. 1988).....10
 22 **Statutes**
 23 20 U.S.C. § 1415(i)(3)(B)..... 1, 10
 24 20 U.S.C. §1400(d)(1)12
 25 California Welfare and Institutes Code section 11460(c)(2) & (3).....6
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 27
 28

1 **Other Authorities**
2 Daniel Golden, “Schools Beat back Demands for Special Ed Services.” Wall Street
3 Journal, July 24, 2007 16
4 **Regulations**
5 California Code of Regulations section 60100(h) 6
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1 **TO PLAINTIFF / CONSOLIDATED DEFENDANT AND ITS**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on August 10, 2009 at 10:00 a.m., or at
4 such other date and time as may be ordered by the Court, in Courtroom 1 of the
5 above-captioned Court, located at 3470 Twelfth Street, Riverside, California
6 92501, Defendant/Consolidated Plaintiff¹ Monica Valentine will and hereby do
7 move for an order granting Defendant's Motion for Attorneys' Fees.

8 This motion is made following a number of conferences of counsel pursuant
9 to U.S. District Court, Central District Local Rule 7-3. There have been numerous
10 occasions when the parties discussed attorneys' fees, including but not limited to
11 June 26, 2008 and May 22, 2009.

12 As the prevailing party Plaintiff Monica Valentine respectfully requests
13 reasonable fees and costs in the amount of \$104,852.60. Of that total, \$42,557.50 is
14 for work in the due process proceeding, \$56,445.10 is for work at the federal court
15 level, and \$5,850.00 is for work on the instant motion (this final figure will be
16 updated on reply). This motion, made pursuant to 20 U.S.C. § 1415(i)(3)(B), is
17 based upon the accompanying Memorandum of Points and Authorities, the
18 concurrently filed Declarations of Heather McGunigle, Shawna L. Parks, Aaron B.
19 Craig, Laurence W. Paradis, Barrett. S. Litt, and Paul VanDoren, the pleadings and
20 papers on file in this action, such matters of which the Court may take judicial
21 notice, and other such evidence and argument as may be presented at the hearing.

22 DATED: July 17, 2009

Respectfully submitted,

DISABILITY RIGHTS LEGAL CENTER

By: /s/ Heather McGunigle

Heather McGunigle

Attorneys for Defendants

/Consolidated Plaintiffs

27 _____
28 ¹ For the purpose of this Motion, Defendant / Consolidated Plaintiff Monica Valentine will be referred to as "Plaintiffs."

1 **I. Introduction**

2 The case of first impression underlying this motion was about whether
3 Student A.S., a special education eligible student with multiple disabilities,
4 including deafness and an emotional disturbance, was entitled to receive a free and
5 appropriate education (“FAPE”). The Individuals with Disabilities Education Act
6 (“IDEA”) mandates that all students identified as eligible for special education and
7 related services receive a FAPE. In the underlying administrative special education
8 hearing, all parties agreed that the National Deaf Academy was the only available
9 placement in the country that constituted a FAPE for A.S. because it was the only
10 place that could address the unique intersection of his communication and mental
11 health needs.

12 Nevertheless, the Riverside Unified School District (“District”) and
13 Riverside County Department of Mental Health (“RCDMH”) refused to place A.S.
14 at the National Deaf Academy because they contended that state law prevented
15 them from doing so.

16 The Office of Administrative Hearings held that the National Deaf Academy
17 was the only appropriate placement available to A.S., holding that even if certain
18 provisions of state law prohibited the District and RCDMH from placing A.S.
19 there, the IDEA and California Education Codes trumped those prohibitory
20 provisions. The Administrative Law Judge thus found that A.S. was not provided a
21 FAPE, and ordered compensatory education to remedy this violation, in the form
22 of placement at the National Deaf Academy.

23 Despite this, the District and RCDMH filed a Motion for Reconsideration
24 with the Office of Administrative Hearings, essentially disputing that the
25 Administrative Law Judge had characterized the award as compensatory education.
26 After the Administrative Law Judge denied their Motion for Reconsideration, the
27 District and RCDMH filed the instant case, seeking reversal of the Administrative
28 Judge’s Order to place A.S. at the only facility able to provide him with a FAPE –

1 the National Deaf Academy. The Court affirmed the Administrative Judge’s Order
2 on July 6, 2009.

3 A.S.’s victory at the administrative due process proceeding and in the federal
4 appeal in this matter dramatically altered his educational landscape. As a result of
5 the ruling by the Administrative Law Judge, A.S. was able to attend the National
6 Deaf Academy, the only placement that would address both his communication
7 and mental health needs. Further, the remarkable outcome in this case may have
8 the precedential effect of deterring RCDMH and other county mental health
9 departments from denying students with disabilities appropriate placements when
10 they require placement at a facility that is run on a for-profit basis in order to
11 receive a FAPE.

12 The consequences of litigating this case were significant not only for
13 children with disabilities, but also for Plaintiff’s counsel, Disability Rights Legal
14 Center (“DRLC”) and Quinn Emanuel. DRLC is a non-profit organization that
15 specializes in representing people with disabilities. In addition to representing
16 low-income parents of children with disabilities, DRLC engages in extensive
17 public service work that is not fee-generating, such as its Options Counseling
18 Program, which provides free resources and referrals to low-income callers with
19 disabilities, and self-advocacy trainings, including special education trainings to
20 low-income parents of children with disabilities so that they can better advocate for
21 their children’s needs. Declaration of Heather McGunigle (“McGunigle Decl.”) ¶
22 2-3. Quinn Emanuel is a large private litigation firm that co-counsels with the
23 DRLC in due process hearings in order to leverage DRLC’s resources and assist
24 DRLC in representing a greater number of low-income clients. Declaration of
25 Aaron B. Craig ¶ 4; Declaration of Shawna L. Parks ¶ 8; McGunigle Decl. ¶ 19.

27 In successfully litigating this action, Plaintiff’s counsel had to expend
28 substantial time and resources demanded by this important case. As the prevailing

1 party, Plaintiff Monica Valentine is entitled under applicable law to recover their
2 full reasonable attorneys' fees and costs because, as set forth in detail below:

3 **(1) Plaintiff is the Prevailing Party.**

4 The Administrative Law Judge determined that Monica Valentine and A.S.
5 prevailed on the sole issue heard. The order below has now been affirmed by this
6 Court.

7 **(2) The Result of this Case Serves the Public Interest.**

8 As a result of this case and the cases which will rely and build upon it, the
9 Riverside Department of Mental Health will be deterred from refusing to place
10 students at a FAPE, even if the only available placement is at a for-profit
11 institution.

12 **(3) Plaintiff's Counsels' Hours were Reasonably Expended and Well**
13 **Documented; Plaintiff's Counsels' Rates are Based on Prevailing**
14 **Market Rates.**

15 Plaintiff's counsel kept detailed records of all hours expended. These
16 records, supported by sworn declarations, constitute conclusive evidence of the
17 time expended. The time expended addressed, *inter alia*, the legal and factual
18 issues involved, the importance of the issue presented. Counsels' rates charged in
19 the instant matter are comparable to prevailing market rates in the legal community
20 as supported by the sworn declarations submitted with this motion.

21 **(4) Plaintiff's Counsel Displayed Exceptional Skill and Expertise.**

22 Based upon the trial experience of Quinn Emanuel and DRLC's experience
23 and expertise in disability and special education law, Plaintiff's attorneys remained
24 focused on the primary issue in this case and litigated the case effectively and
25 efficiently. Plaintiff's success was directly related to counsels' careful preparation,
26 underlying research, and diligence.

27 As a result, Plaintiff is entitled to the full measure of attorneys' fees and
28 costs requested.

1 **II. Requested Fees and Costs**

2 Plaintiff now moves for an award of reasonable fees and costs. The total
3 amounts incurred by Plaintiff up through July 16, 2009 are as follows:

4 **Due Process Work²**

- 5 1. Lodestar Fees:\$41,685.25
6 2. Costs: \$932.25
7 3. Total: \$42,557.50

8 **Fees for Time Spent in Federal Court on Plaintiff's Appeal of the**
9 **Administrative Law Judge Decision and Related Proceedings**

- 10 1. Lodestar Fees: \$54,793.75
11 2. Costs: \$1,651.35
12 3. Total: \$56,445.10

13 **Fees for Time Spend on the Instant Motion**

- 14 i. Lodestar Fees:\$5,850.00
15 ii. Costs: \$0.00
16 iii. Total: \$5,850.00

17 **III. Factual Background**

18 At the time of the underlying administrative hearing, A.S. was seventeen
19 years old. His family is low-income. He is deaf and his only effective mode of
20 communication is American Sign Language. He also has a serious emotional
21 disturbance and a long history of social and behavioral problems and has had
22 numerous psychiatric hospitalizations. In addition, A.S. has been assessed as
23 having borderline cognitive ability, and also has impaired vision. Throughout his
24 educational career, A.S. has experienced multiple failed placements, because he
25 requires a highly specialized program that can meet both his mental health and
26

27 ² These numbers are the fees sought after substantial discounts for purposes of billing judgment
28 and to reflect the fact that Plaintiffs have settled with the District and thus do not seek fees
against the District in this motion. *See infra* Section VII for further explanation of Plaintiffs' calculations.

1 communication needs. During this time, A.S. has been hospitalized as a result of
2 his mental health conditions, including being placed on several 72-hour psychiatric
3 holds. Decision, Supp. A.R. p. 782-784, ¶¶ 5 and 16. Stipulated Facts, Supp. A.R.
4 p. 733, ¶¶ 8 and 10.

5 DRLC attorney Heather McGunigle has been advocating for A.S. since
6 2005, assisting his family in the struggle to find him an appropriate placement.
7 McGunigle Decl. ¶ 5. After A.S. moved to the District in 2007, the parties made a
8 number of attempts at an educational placement. However, none of these were
9 successful given his very unique needs. In October of 2007, the Individualized
10 Education Plan team met and recommended placement at a residential program.
11 Despite investigation of a variety of programs, RCDMH “exhausted all leads for
12 placement of [A.S.] in a non-profit, in-state or out-of-state residential treatment
13 center.” Decision, Supp. A.R. p. 783 ¶14; Stipulated Facts Supp. A.R. p. 737 at ¶¶
14 24-26.

15 Separately from the District and Department of Mental Health, A.S. (through
16 his parent and counsel) located the National Deaf Academy, which could
17 accommodate both his mental health condition, cognitive abilities and also had a
18 staff that was fluent in American Sign Language. All parties “agree[d] that the
19 [National Deaf Academy] is an appropriate placement which would provide
20 Student a FAPE.” Decision, Supp. A.R. p. 783-784, ¶ 15; Stipulated Facts, Supp.
21 A.R. p. 733 ¶ 9, *Id.* at 737, ¶ 25.

22 However, the District and RCDMH took the position that they could not
23 place A.S. at the National Deaf Academy because it is operated by a for-profit
24 entity. More specifically, they took the position that California law, specifically the
25 California Code of Regulations section 60100(h) and California Welfare and
26 Institutes Code section 11460(c)(2) & (3) prohibited them from placing student at a
27 for-profit entity. As a result, A.S. filed for due process.
28

1 **IV. History of Litigation**

2 **A. Underlying Due Process Proceeding**

3 On September 25, 2007, A.S. filed his First Amended Request for Due
4 Process Hearing based on his need for a therapeutic residential placement that
5 could meet both his communication and mental health needs. *See* First Amended
6 Request for Due Process Hearing, Supp. A.R. p. 675. On December 31, 2007, the
7 Parties submitted their joint Stipulated Statement of Facts and Evidence, Supp.
8 A.R. p. 731; their Joint Stipulation of Issue to be Decided, Supp. A.R. p. 722; and
9 their Closing Arguments, Supp. A.R. p. 743.

10 In the underlying proceeding, no disagreement existed among the parties as
11 to what constituted a FAPE. All parties agreed that the National Deaf Academy
12 was the only placement able to afford Student a FAPE. The issue presented for
13 resolution was whether the District and RCDMH could place A.S. at a for-profit
14 institution, when no other appropriate residential placement is available to provide
15 him a FAPE. Decision, Supp. A.R. p. 891.

16 The matter was decided based upon the documents submitted, and no
17 hearing was held. *See* Decision, Supp. A.R. p. 780. The Administrative Law Judge
18 took judicial notice of the Stipulated Facts. Decision, Supp. A.R. p. 781, fn. 1. On
19 January 15, 2008, she issued her Decision in favor of Student, ordering District and
20 RCDMH to place A.S. at the National Deaf Academy, a for-profit residential
21 placement. Decision, Supp. A.R. p. 788. The Administrative Law Judge held, *inter*
22 *alia*, that assuming the District and Department of Mental Health's interpretation
23 was correct (that certain state regulations and codes prevent placement at a for-
24 profit institution) that this runs counter to both the California Education Code as it
25 relates to special education and the mandates of the IDEA. Decision, Supp. A.R. p.
26 786-788, ¶¶ 9-17. The Administrative Law Judge thus concluded that regardless of
27 whether the District and Department of Mental Health properly interpreted the
28 state regulations and Welfare and Institutions Code, that:

1 [A.S.] has ultimately been denied a FAPE since May 23, 2007,
2 when he was terminated from attending [the Riverside School
3 for the Deaf]... Student's need for therapeutic residential
4 placement with ASL services continues. As a result of this
5 denial of FAPE, Student is entitled to compensatory education...

6 Decision, Supp. A.R. p. 788, ¶ 17. Thus, the Administrative Law Judge ordered
7 "[t]he District has denied Student a free appropriate public education as of May 23,
8 2007. The District and [RCDMH] are to provide Student with compensatory
9 education consisting of immediate placement at the National Deaf Academy...."
10 Decision, Supp. A.R. p. 788.

11 On January 28, 2008, District submitted its Motion for Reconsideration of
12 Decision and Order. RCDMH filed a joinder in District's Motion on January 31,
13 2008. Supp. A.R. p. 791-806. They objected to the fact that the Administrative
14 Law Judge characterized the relief she provided as compensatory education. The
15 agencies' objections were based on the fact that the parties had not identified
16 "compensatory education" as an issue for the Administrative Law Judge to resolve,
17 and because A.S. waived claims for compensatory education for the time period of
18 April 20, 2007 through October 9, 2007. However, A.S. never disputed the waiver.
19 Indeed in A.S.'s Response in Opposition to District and RCDMH's Motion for
20 Reconsideration, he expressly stated that he does not dispute the existence of a
21 waiver, but contended that he was entitled to placement as a matter of FAPE.³
22 Order Denying Motion for Reconsideration, Supp. A.R. p. 819, ¶ 6; Student's
23 Response in Opposition to Motion for Reconsideration, Supp. A.R. p. 811, fn. 1.
24 On February 20, 2008, the Administrative Law Judge issued her Order Denying
25 Motion for Reconsideration, and reasserted her order of equitable compensatory
26 relief in the form of placement at National Deaf Academy. Order Denying Motion
27

28 ³ In any event, any waiver did not cover the entire period at issue in the proceeding and thus
could not have affected the ultimate outcome.

1 for Reconsideration, Supp. A.R. p. 820.

2 **B. Federal Court Proceeding**

3 **1. Federal Court Appeal of Due Process Decision**

4 District and RCDMH filed cases appealing the underlying due process
5 decision. At the same time Ms. Valentine and A.S. filed a case to recover
6 attorneys' fees for prevailing in the underlying due process proceeding. In the time
7 between the due process decision and the appeal in this matter, A.S. left the
8 National Deaf Academy. Thus, the practical effect of the due process decision was
9 complete. However, the outcome of the appeal would determine Defendants'
10 entitlement to attorneys' fees. It could also set a precedent regarding legal
11 obligations of the entities involved in situations such as these where the needs of
12 the student are very unique, and the services available to meet those needs are very
13 limited. However, aside from precedential value, the only remaining relief at issue
14 in the case was attorneys' fees. The District's and RCDMH's appeals, however,
15 presented novel issues of first impression. Therefore, the issues required extensive
16 briefing by Plaintiff at the federal appeal stage.

17 On May 14, 2009, representatives of all of the parties attended a Mandatory
18 Settlement Conference in front of Magistrate Judge Rosalyn M. Chapman. The
19 District and Plaintiff settled their claims against each other at this Conference.
20 After the Mandatory Settlement Conference RCDMH moved to Disqualify
21 Magistrate Judge Chapman and Plaintiff filed an Opposition to this Motion and
22 prepared for the hearing on July 6, 2009. Plaintiff also responded to RCDMH's ex
23 parte Application for Continuance of the Mandatory Settlement Conference and
24 submitted a Joint Stipulation to Seal Documents Regarding Mandatory Settlement
25 Conference. At the July 6 hearing on the motion for disqualification the Court
26 indicated that it would affirm the Administrative Law Judge's order, and that issue
27 thus was moot. See July 6, 2009 Minute Order (Docket No. 101).

28 **V. Legal Standard**

1 The Individuals with Disabilities Education Improvement Act (the “IDEIA”)
2 entitles A.S. through his mother, as the prevailing party, to recoup his attorneys’
3 fees incurred in vindicating his right to a free and appropriate public education. 20
4 U.S.C. § 1415(i)(3)(B). Moreover, he is entitled to recover the attorneys’ fees
5 incurred to enforce the right to reimbursement of the fees from the underlying
6 action, commonly known as “fees on fees.” *See Barlow-Gresham Union High Sch.*
7 *Dist. No. 2 v. Mitchell*, 940 F.2d 1280, 1286 (9th Cir. 1991).

8 As with all claims for attorneys’ fees, the starting point in a court’s analysis
9 of an IDEIA attorneys’ fees award is the calculation of a presumptively reasonable
10 “lodestar” amount, where the court multiplies the number of reasonable hours
11 expended on the case by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S.
12 424, 433 (1983); *Caudle v. Bristol Optical Co., Inc.*, 224 F.3d 1014, 1028 (9th Cir.
13 2000); *cf. PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000) (California
14 state calculation of attorneys’ fees award using the lodestar amount).

15 These fees are to be calculated at the prevailing private market rates. Only
16 this is considered a “fully compensatory fee” that encourages the vindication of
17 constitutional and statutory rights. *See Hensley*, 461 U.S. at 435; *Ustrak v.*
18 *Fairman*, 851 F.2d 983, 988 (7th Cir. 1988); *see generally Blum v. Stenson*, 465
19 U.S. 886, 895 (1984) (legislative history of civil rights statutes requires that hourly
20 rates for public interest attorneys equal prevailing private market rates). The
21 “award of fees to legal aid offices and other groups furnishing *Pro bono publico*
22 representation promotes the enforcement of the underlying statutes as much as an
23 award to privately retained counsel.” *Dennis v. Change*, 611 F.2d 1302, 1306 n.12
24 (9th Cir. 1980); *see also* Declaration of Barrett S. Litt (“Litt Decl.”) ¶¶ 15-16.

25 Adjustments to this presumptively reasonable amount may then be made
26 based upon the factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,
27
28

1 69-70 (9th Cir. 1975), *cert denied*, 425 U.S. 951 (1976), to the extent that those
2 factors are not reflected in the lodestar calculation. *See Caudle*, 224 F.3d at 1028-
3 29. The *Kerr* factors include: (1) the time and labor required; (2) the novelty and
4 difficulty of the questions involved; (3) the skill requisite to perform the legal
5 service properly; (4) the preclusion of other employment by the attorney due to
6 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or
7 contingent; (7) time limitations imposed by the client or the circumstances; (8) the
8 amount involved and the results obtained; (9) the experience, reputation, and
9 ability of the attorneys, (10) the "undesirability" of the case; (11) the nature and
10 length of the professional relationship with the client, and (12) awards in similar
11 cases. *Kerr*, 526 F.2d at 69-70.

12 As will be explained below, both the rates charged and the hours spent by
13 Plaintiff's attorneys are reasonable, and the Court need go no further than this
14 lodestar amount to award the full fees incurred in this action. However, should the
15 Court do so, application of the abovementioned factors to the circumstances of the
16 case demonstrate that the amount requested by Plaintiff is reasonable. For
17 instance, Quinn Emanuel and the DRLC attorneys involved in this action have
18 dedicated over 450 hours over the last two years vindicating A.S.'s rights, with the
19 Quinn Emanuel attorneys doing so at the expense of more lucrative work. DRLC is
20 widely recognized as an expert in the field of disability rights and special
21 education, and known for bringing important and cutting edge cases in these fields.
22 Parks Decl. ¶ 3. Furthermore, there are very few lawyers in Southern California
23 and the Inland Empire, in particular, who are available or willing to undertake such
24 matters. Declaration of Paul VanDoren ¶¶ 4, 9. Finally, Plaintiff obtained an
25 excellent result at the administrative hearing, which was upheld on appeal.
26

27
28 **VI. Plaintiff is the Prevailing Party Under Both State and Federal Law**

1 **and is Entitled to Attorneys’ Fees and Costs**

2 Plaintiff was the prevailing party in the underlying action filed. Plaintiff
3 meets all conceivable standards to be a prevailing party with entitlement to
4 attorneys’ fees pursuant to IDEA. IDEA was created “to bring previously excluded
5 handicapped children into the public education systems of the States and to require
6 the States to adopt procedures which would result in individualized consideration
7 of and instruction of each child.” *Bd. Ed. The Hendrick Hudson Cent. Sch. Dist.,*
8 *Westchester County v. Rowley*, 458 U.S. 176, 189 (1982).

9 IDEA seeks “to ensure that all children with disabilities have available to
10 them a free appropriate public education that emphasizes special education and
11 related services designed to meet their unique needs and prepare them for further
12 education, employment and independent living...” 20 U.S.C. §1400(d)(1). IDEA,
13 its implementing regulations and California law set forth specific and
14 comprehensive requirements to ensure that this occurs.

15 A party is “prevailing” when it can “point to a resolution of the dispute
16 which changes the legal relationship between itself and the defendant.” *Texas State*
17 *Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989). “[A]
18 plaintiff ‘prevails’ when actual relief on the merits of his claim materially alters the
19 legal relationship between the parties by modifying the defendant’s behavior in a
20 way that directly benefits plaintiff.” *Barrios v. California Interscholastic*
21 *Federation*, 277 F.3d 1128, 1134 (9th Cir. 2002) (internal quotations and citations
22 omitted); see also *Texas State Teachers Ass’n*, 489 U.S. at 792-93 (stating that
23 touchstone is the “material alteration of the legal relationship of the parties.”);
24 *Park, ex rel. Park v. Anaheim Union High School Dist.*, 464 F.3d 1025, 1035-36
25 (9th Cir. 2006); and *Shapiro ex rel. Shapiro v. Paradise Valley Unified Sch. Dist.*,
26 374 F.3d 857, 864-65 (9th Cir. 2004) (alteration of legal relationship is relevant
27 inquiry).

28 Importantly, the Ninth Circuit has held that “a material alteration of the legal

1 relationship occurs [when] the plaintiff becomes entitled to enforce a judgment...In
2 these situations, the legal relationship is altered because the plaintiff can force the
3 defendant to do something he otherwise would not have to do.” *Barrios*, 277 F.3d
4 at 1134 (emphasis added). So long as “a party... ‘succeed[s] on any significant
5 issue in the litigation which achieves some of the benefit the parties sought in
6 brining suit.’” He is the prevailing party for purposes of attorneys’ fees. *Parents of*
7 *Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 1498 (9th Cir. 1994)
8 (alteration in original) (emphasis added) (quoting *Hensley v. Eckerhart*, 461 U.S.
9 424, 433 (1988)).

10 In the underlying matter here, Plaintiff prevailed on the sole issue heard, and
11 were awarded one hundred percent of the relief sought. The Administrative Law
12 Judge explicitly found that “[t]he Student prevailed on the sole issue heard and
13 decided.” Decision, Supp. A.R. at 788. The relief altered the parties’ legal
14 relationship and Plaintiff was consequently able to force Defendants to provide
15 placement at the National Deaf Academy. This order is now affirmed on appeal.

16 Courts have held that a victory on the issue of educational placement, denial
17 of FAPE, or procedural violations of IDEA is each sufficient to entitle plaintiff to
18 fees. See, e.g., *M.L. v. Federal Way School District*, 394 F.3d 634 (9th Cir. 2005)
19 (finding failure to include regular education teacher on IEP team a significant
20 violation of IDEA procedures) on remand 401 F.Supp.2d 1158, 1163 (student was
21 prevailing party and entitled to fees based on result); *County of San Diego v. Calif.*
22 *Special Education Hearing Office*, 93 F.3d 1458,1468 (9th Cir. 1996) (entitlement
23 to fees when student prevailed on issue of residential placement); *Union School*
24 *District v. Smith*, 15 F.3d 1519 (9th Cir. 1994) (entitlement to fees when district
25 failed to make a formal offer and parents ordered reimbursed for placement).

26 The underlying case specifically involved the issue of placement, and the
27 Administrative Law Judge found that A.S. had been denied a FAPE. For all of the
28 reasons stated above, Plaintiff is entitled to recover full attorneys’ fees and costs as

1 mandated by both federal and state statutes and binding precedent.

2 **VII. The Amount Sought by Plaintiff Is Reasonable.**

3 The starting point for computation of attorneys' fees in civil rights cases is
4 the "lodestar" arrived at by multiplying the number of hours reasonably expended
5 by the reasonable hourly rates. *See Hensley v. Eckerhart*, 461 U.S. 424, 433
6 (1983). The "resulting product is presumed to be the reasonable fee to which
7 counsel is entitled." *Pennsylvania v. Delaware Valley Citizens Council for Clean*
8 *Air*, 478 U.S. 546, 564 (1986) (internal quotations omitted). Where, as here,
9 Plaintiff obtained substantial results, the "attorney should recover a fully
10 compensatory fee . . . encompass[ing] all hours reasonably expended on the
11 litigation" *Hensley v. Eckerhart*, 461 U.S. at 435. Under federal law a "fully
12 compensatory fee" is one that encourages the vindication of constitutional and
13 statutory rights through recovery of all costs and time spent on the case, calculated
14 at private market rates. It must ensure that attorneys are paid for all the time they
15 devote to the litigation. It is not limited by the number of causes of actions on
16 which relief is awarded, or the amount of damages recovered. *See City of Riverside*
17 *v. Rivera*, 477 U.S. 561, 581 (1986). Thus, once the Plaintiff has been determined
18 to be the prevailing party, they are entitled to all reasonable time spent.

19 Plaintiff's counsels' lodestar is reasonable because: (a) detailed,
20 contemporaneous records show that counsel expended all hours on negotiation or
21 litigation tasks necessary to attaining relief and (b) counsels' billing rates are
22 comparable to those of attorneys with similar expertise and experience.

23 **a. The Number Of Hours Claimed Is Reasonable and Well-**
24 **Documented**

25 **i. Plaintiff's Counsel Pursued This Case Efficiently And The**
26 **Hours Claimed Are Reasonable.**

27 The time spent on this case was necessary and reasonable. This case was
28 pursued as efficiently as possible in light of RCDMH's position on settlement and

1 unwillingness to give properly place Student at the National Deaf Academy.
2 Because, as the hearing decision shows, this case involved complicated legal
3 issues, including conflicts of laws, it required extensive briefing in order to be
4 decided both by the Administrative Law Judge and the District Court. McGunigle
5 Decl. ¶¶ 9-10.

6 In the underlying proceeding, all parties agreed that the National Deaf
7 Academy was the only placement able to afford Student a FAPE. The issue
8 presented for resolution was whether the District and RCDMH could place A.S. at
9 a for-profit institution, when no other appropriate residential placement is available
10 to provide him a FAPE. Decision, Supp. A.R. p. 891.

11 The Matter was decided based upon the documents submitted, and no
12 hearing was held. See Decision, Supp. A.R. p. 780. The Administrative Law Judge
13 took judicial notice of the Stipulated Facts. Decision, Supp. A.R. p. 781, fn. 1. On
14 January 15, 2008, she issued her Decision in favor of Student, ordering District and
15 RCDMH to place A.S. at the National Deaf Academy, a for-profit residential
16 placement. Decision, Supp. A.R. p. 788.

17 Plaintiff's counsel used appropriate staffing in the prosecution of this case.
18 While DRLC and Quinn Emanuel both represented client, Counsel's work was
19 efficient, not duplicative. For example, in the underlying proceeding, Ms.
20 McGunigle was the lead DRLC attorney on the case, while minimal time was spent
21 by other DRLC attorneys during the due process phase. In addition, only one
22 Quinn Emanuel attorney was assigned to the due process case at any given time.
23 Mr. Craig worked on the case at its inception with Ms. McGunigle. Only when Mr.
24 Craig had to stop working on the case due to prior obligations did Ms. Garcia
25 become involved. McGunigle Decl. ¶ 21; Parks Decl. ¶ 9; Craig Decl. ¶ 5.

26 Similarly, Plaintiff's counsel used appropriate staffing in the consolidated
27 federal appeals. For example, again, the majority of DRLC's time is billed by
28 Heather McGunigle, with litigation Director Shawna L. Parks acting as lead

1 counsel and supervisor. McGunigle Decl. ¶ ; Parks Decl. ¶ 10. Additionally, as in
2 the due process case, only one attorney from Quinn Emanuel was assigned to the
3 consolidated federal appeals at any given time. McGunigle Decl. ¶ ; Parks Decl. ¶
4 10.

5 Federal cases have recognized that “lawyers often hire other lawyers to help
6 them with specific issues in the case.” *Bouman v. Block*, 940 F.2d 1211, 1236 (9th
7 Cir. 1991). The Court will deny fees because they are duplicative “only if the
8 attorneys are unreasonably doing the same work.” *Johnson v. University College*,
9 706 F.2d 1205, 1208 (11th Cir. 1983); *see also*, *U.S. v. City and County of San*
10 *Francisco*, 748 F.Supp. 1416, 1421 (N.D. Cal. 1990), *aff’d* in relevant part sub
11 *nom Davis v. City and County of San Francisco*, 976 F.2d 1536, 1544 (9th Cir.
12 1992).

13 In order to justify a reduction in the lodestar based upon excessive time,
14 Defendants must show that “the time claimed if obviously and convincingly
15 excessive.” *Perkins v. Mobile Housing Board*, 847 F.2d 735 (11th Cir. 1988).
16 Based upon Plaintiff’s counsel’s experience with Defendants prior to the hearing, it
17 was apparent that the due process case would be hard fought. This in combination
18 with the current low success rate of parents in California due process hearings, and
19 the complexity of issue involved, led DRLC to procure co-counsel in order to
20 protect the interests of our client.⁴

21 The law firm of Quinn Emanuel has extensive trial expertise, while DRLC
22 has extensive experience and subject matter expertise in the area of disability rights
23 and special education. This partnership allowed counsel to provide effective
24 representation on a procedural and substantive level. The billing records show that
25 the partnership was not duplicative, but rather an efficient division of labor and
26

27 ⁴ In California, parents prevail at the due process hearings less than ten percent of the time. *See*
28 Daniel Golden, “Schools Beat back Demands for Special Ed Services.” *Wall Street Journal*, July
24, 2007 (noting that in 2005-2006, parents won only 11 of 119 due process decisions that year).
Thus, Defendant’s victory at the administrative level is truly significant.

1 leveraging of resources. See McGunigle Decl. ¶ 19, Exhibits E-H; Craig Decl.,
2 Exh. A.

3 The public interest/private firm partnership of Quinn Emanuel and DRLC
4 has previously been found to utilize reasonable billing rates and to expend
5 reasonable hours on matters on which the two firms collaborate. *Pulido v. Rialto*
6 *Unified School District* involved an award of attorneys' fees to DRLC and Quinn
7 Emanuel after the two firms prevailed at a due process hearing before the state
8 agency. See Order entered May 11, 2008, C.D. Cal. Case No. EDCV 07-0506 VAP
9 (attached as Exhibit B to the Craig Declaration). The court in *Pulido* specifically
10 found that both firms efficiently used their time to prepare for the hearing as well
11 as in bringing an action for attorneys' fees. The court in *Pulido* also held that it
12 was reasonable to have multiple attorneys, from both DRLC and Quinn Emanuel,
13 represent the plaintiff in the due process hearing. See Craig Decl., Exh. B at 15-16
14 (specifically rejecting contention that only a sole attorney should have attended the
15 administrative hearing).
16

17 In that case, the student sought a total of \$99,283.37 in fees and costs for
18 both the underlying due process action and the fees suit in the district court. The
19 court awarded \$85,905.50 in fees. These numbers only slightly lower than those at
20 issue here because, among other reasons, Quinn Emanuel was retained on the eve
21 of the hearing before the administrative hearing. Additionally, unlike the present
22 action, the school district in *Pulido* did not needlessly expand the litigation by
23 filing a merits appeal.

24 **ii. Plaintiff's Counsel Has Provided Detailed Documentation**
25 **Of Fees.**

26 Plaintiff's counsel has provided detailed documentation of fees. See Exhibits
27 E-H of McGunigle Decl.; Craig Decl., Exhibit A. The time records of Plaintiff's
28 counsel are more than accurate to meet the documentation requirements set forth

1 by the Supreme Court and the Ninth Circuit. *See Hensley v. Eckerhart*, 461 U.S. at
2 437 n.12, (“Plaintiff’s counsel, or course, is not required to record in great detail
3 how each minute of his time was expended. But at least counsel should identify the
4 general subject matter of his time expenditures.”); and *Dennis v. Chang*, 611 F.2d
5 1302, 1309 (9th Cir. 1980) (finding chronological and detailed time records with
6 no dates sufficient). Plaintiff’s counsels’ records exceed this standard in that they
7 provide detailed descriptions of the work conducted. See Exhibits E-H of
8 McGunigle Decl.; Craig Decl., Exhibit A. Additionally, the declarations and
9 supporting documentation submitted herewith constitute evidence of exactly the
10 type that courts have relied on in numerous fees decisions. *See, e.g., Perkins v.*
11 *Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1988) (“[S]worn testimony
12 that, in fact, it took the time claimed is evidence of considerable weight on the
13 issue of the time required in the usual case...”).

14 **b. The Hourly Rates Claimed Are Reasonable and Comparable to**
15 **Other Local Attorneys’ Rates**

16 The United States Supreme Court has clearly held that fee awards to public
17 interest attorneys who do not charge their clients (such as Defendant’s counsel)
18 must be based on the prevailing billing rates of attorneys in private practice with
19 similar skills and experience. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984)
20 (legislative history of civil rights statutes requires that hourly rates for public
21 interest attorneys equal prevailing private market rates).

22 Plaintiff’s counsel request compensation for the work in this case at their
23 regular hourly rates. McGunigle Decl. ¶ 29; Craig Decl. ¶ 8. These rates are
24 reasonable as measured by the rates charged by attorneys of comparable experience
25 and skill in Southern California.

26 As the itemized bill shows, counsels’ rates are in line with those of attorneys
27 with similar experience and length of practice. As an initial matter, the majority of
28 the hours sought from the due process proceeding and the consolidated federal

1 appeals are submitted by Heather McGunigle at an hourly rate of \$375.00. This
2 rate is well within the going rate in the community.

3 Plaintiff has provided representative declarations of attorneys which
4 establish that rates for Plaintiff's counsel are within the prevailing hourly rates. *See*
5 *Declarations of Barrett S. Litt and Laurence W. Paradis*. In addition, DRLC's
6 earlier rates have been approved on . *See, e.g. Pulido v. Rialto Unified School*
7 *District*. Attorneys in Southern California do not alter their rates depending on in
8 which division of the Central District their case resides, and have had their
9 standard rates charged for work performed in Los Angeles approved in the Eastern
10 Division of the Central District. *See Litt Decl.* ¶ Thus, rates charged in the
11 Southern California area are the applicable market rates.

12 Even if the Inland Empire were to have a different or lower rate structure
13 than other parts of Southern California, such a rate structure is not appropriate in
14 this matter. Rates, other than those of the forum, may be employed if local counsel
15 was unavailable, either because they are unwilling or unable to perform because
16 they lack the degree of experience, expertise, or specialization required to handle
17 properly the case. *See, e.g., McDonald v. Armontrout*, 860 F.2d 1456, 1459-60 (8th
18 Cir. 1988); *Polk v. New York State Dept. of Correctional Servs.*, 722 F.2d 23, 25
19 (2nd Cir. 1983); *Louisville Black Officers Org., Inc. v. Louisville*, 700 F.2d 268,
20 278 (6th Cir. 1983); *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768-69 (7th Cir.
21 1982), *cert. denied*, 461 U.S. 956, 103 S. Ct. 2428, 77 L.Ed.2d 1315 (1983); *see*
22 *also National Wildlife Federation v. Hanson*, 859 F.2d 313, 317-18 (4th Cir.
23 1988); *Maceira v. Pagan*, 698 F.2d 38, 40 (1st Cir. 1983).

24 Here, there are few or no practitioners willing to represent low-income
25 children in special education proceedings in the Inland Empire. *Van Doren Decl.* ¶
26 ¶ 4, 9. Thus, Plaintiff's counsel is entitled to fees for the effective representation
27 counsel provided to Plaintiff even if those fees are normally charged in the Los
28 Angeles community.

1 As set forth below and in the supporting declarations submitted herewith,
2 Plaintiff's counsel's rates are reasonable and well-justified.

3 **i. Heather McGunigle**

4 Ms. McGunigle is the Director of the DRLC's Inland Empire Program. Her
5 rate is \$375 per hour. Ms. McGunigle has been substantially involved in this case
6 at all phases. McGunigle Decl. ¶¶ 11-12.

7 Ms. McGunigle is a 2004⁵ graduate of Loyola Law School. Prior to joining
8 the DRLC, Ms. McGunigle participated in externships in DRLC's Civil Rights
9 Litigation Program and Education Advocacy project. In addition, she externed at
10 the Inner City Law Center, the Legal Aid Foundation of Los Angeles' Eviction
11 Defense Center, the Equal Employment Opportunity Commission, and the
12 Barrister's Pro Bono Domestic Violence Project. She is a 2005 recipient of Loyola
13 Law School's Post Graduate Public Interest Fellowship.. Ms. McGunigle has
14 represented numerous children in special education matters in both Riverside and
15 San Bernardino County. McGunigle Decl. ¶ 11, Exh. A.

16 Upon joining DRLC, Ms. McGunigle opened DRLC's Inland Empire
17 satellite office, where she has participated in impact litigation and special
18 education advocacy. Ms. McGunigle is an adjunct Professor of Law at University
19 of La Verne, College of Law, where she teaches disability rights law. Ms.
20 McGunigle also conducts special education trainings for parents in the Inland
21 Empire, and developed a services Matrix in conjunction with the Inland Empire
22 Health Plan to clarify interagency responsibilities to children with disabilities.
23 McGunigle Decl. at Exh. A.

24 **ii. Shawna Parks**

25 Shawna Parks is the Director of the Civil Rights Litigation Program at the
26 Disability Rights Legal Center. Her rate is \$525 per hour. As the DRLC's director
27

28 ⁵ Ms. McGunigle graduated from Law School in December 2004. Therefore, she is effectively a 2005 law school graduate.

1 of litigation, Ms. Parks transitioned on to this case when it reached the federal
2 level. Parks Decl. 10.¶

3 Ms. Parks has worked extensively on high-impact cases affecting the rights
4 of people with disabilities. These include cases regarding the rights of children
5 with disabilities in the foster care and juvenile justice systems, the rights of people
6 with disabilities in the criminal justice system, as well as a wide variety of cases
7 addressing physical and communication access at private and public entities. Parks
8 Decl. ¶ 3.

9 Ms. Parks is a 1999 graduate of Boalt Hall School of Law at U.C. Berkeley
10 where she was a Notes & Comments Editor of the *California Law Review* and a
11 member of the Task Force on Public Interest Law. Upon graduation from law
12 school, Ms. Parks was a Fulbright Fellow in Budapest, Hungary, where she
13 focused on the implementation of Hungary's disability rights legislation. Prior to
14 joining DRLC Ms. Parks was an Equal Justice Works / Cotchett-Furth Fellow and
15 Staff Attorney at Disability Rights Advocates in Oakland, California, and an
16 associate at the civil rights law firm of Schonbrun DeSimone Seplow Harris &
17 Hoffman, where she focused on cases addressing race and gender discrimination.
18 Parks Decl. ¶¶ 2, 5, Exh. A.

19 Ms. Parks is an Adjunct Professor at Loyola Law School where she teaches
20 Disability Rights and Special Education Law, supervises the DRLC's litigation
21 externship program, and teaches the accompany disability rights and litigation
22 seminar. Parks Decl. ¶ 6.

23 Ms. Parks supervised this case once it was in federal court on appeal. Ms.
24 Parks' resume is attached to her declaration as Exhibit A, filed concurrently
25 herewith.

26 **iii. Maronel Barajas**

27 Ms. Barajas is a 2003 graduate of Columbia Law School. Her current billing
28 rate is \$224 per hour. She is the former Director of DRLC's Education Advocacy

1 Project. Ms. Barajas was involved in this case at the due process level, and
2 transitioned off of the case when it reached the federal level. McGunigle Decl. ¶
3 14. Ms. Barajas' resume is attached as Exhibit B of the Declaration of Heather
4 McGunigle.

5 **iv. Kristelia Garcia**

6 Kristelia Garcia is a 2003 graduate of Yale Law School, and former
7 associate at Quinn Emanuel. Her most recent billing rate was \$550 per hour. Ms.
8 Garcia was actively involved in this case at both the due process and federal levels.
9 Craig Decl. ¶ 6. Ms. Garcia is now the Director of Business Development at
10 Myspace Music. Her professional information is attached to the Declaration of
11 Heather McGunigle as Exhibit D. See also McGunigle Decl., ¶ 22.

12 **v. Aaron Craig**

13 Aaron Craig is a 1999 graduate of Yale Law School, and an of counsel at
14 Quinn Emanuel. He has extensive litigation experience, and is an expert on
15 intellectual property litigation, representing multinational corporations. Mr. Craig
16 has also participated in significant antitrust and cost accounting litigation. Mr.
17 Craig has practiced before the International Trade Commission in Washington
18 D.C., in addition to federal and state courts throughout California. Craig Decl. Mr.
19 Craig's current billing rate is \$590 per hour. Mr. Craig's professional information
20 is attached to the Declaration of Heather McGunigle as Exhibit C, filed
21 concurrently herewith. See also McGunigle Decl., ¶¶ 19-21.

22 **c. In the Exercise of Billing Judgment, Plaintiff's Counsel Has**
23 **Discounted its Lodestar Total**

24 In the exercise of billing judgment and to take account of any duplication or
25 inefficiencies, DRLC has substantially reduced its total hours. Plaintiff's counsel
26 has deleted the time of DRLC attorneys Zaheva Stevens and Anna Rivera, both of
27 whom worked on the case. Likewise, Quinn Emanuel has deleted the time of
28 Timothy Alger and Rory S. Miller, each of whom spent time on the case. Plaintiff

1 deducted this time to account for any inefficiency or duplication in staffing.
2 McGunigle Decl. ¶ 24; Parks Decl. ¶ 11.

3 Further, because Plaintiff has settled with the District, Plaintiff has deducted
4 all time in their billing that is exclusively attributable to District. See McGunigle
5 Decl ¶ 25; See, also Exhibit E of McGunigle Decl. and Exhibit A of Craig Decl.⁶
6 After all of the above mentioned deductions, Plaintiff's counsel then divided the
7 total bill in half to account for their settlement with the District.

8 This approach actually underestimates RCDMH's liability for fees in this
9 matter. Some of the entries that were divided in half are related attributable only to
10 RCDMH and not the District. However, for ease of calculation, and to account for
11 any remaining inefficiencies, Plaintiff has opted to simply divide all remaining
12 hours in half. McGunigle Decl. ¶ 26; Exhibits F-G to McGunigle Decl.

13 Plaintiff's original bill totaled \$224,768.28. Plaintiff's counsel has
14 discounted its lodestar total by more than 50 percent, to a total of \$104,852.60.
15 Table summaries detailing this reduction are attached to Declaration of Heather
16 McGunigle as Exhibits F and G.

17 **VIII. This Fee Award Should Include Fees for Time Spent in Federal**
18 **Court.**

19 Plaintiff is entitled to recover her fees and costs incurred in litigating the fee
20 issue. *See Bernardi v. Yeutter*, 951 F.2d 971, 975 (9th Cir. 1991) (holding that
21 denial of fees-on-fees issue is reversible error); *see also Clark v. City of Los*
22 *Angeles*, 803 F.2d 987, 992 (9th Cir. 1986). Plaintiff has been required to file a
23 separate action in federal court to recover her attorneys' fees, and has been
24 required to, among other things, appear for a Mandatory Settlement Conference, in
25 addition to filing this motion. Through July 16, 2009, Plaintiff's counsel have
26 generated fees of \$5,850.00 while preparing this motion. Counsel has submitted
27

28 ⁶ Deducted entries on the billing records are represented by a black horizontal line to the right of each deducted entry. See Exh. E of McGunigle Decl. and Exh. A of Craig Decl.

1 billing records for this work performed at the federal court level. McGunigle Decl.
2 Exhibit H his amount will be updated on Reply to include final work to prepare
3 this motion as well as work through the Reply.

4 **IX. Conclusion**

5 DRLC charges no fees to its clients, and has brought many landmark
6 disability rights cases as well as cases, such as the one at issue here, addressing the
7 critical needs of low-income children with disabilities. These precedent-setting
8 cases, and the many other actions undertaken by DRLC, are risky, lengthy, and
9 expensive enterprises. It is essential that DRLC be fully compensated where, as
10 here, Plaintiff has prevailed in an important civil right and is entitled to recover
11 attorneys' fees and costs as a matter of law.

12 For the foregoing reasons, Plaintiff respectfully requests that this Court find
13 that the fees charged and the hours spent ensuring A.S.'s right to a free and
14 appropriate public education, which were denied by the RCDMH and only secured
15 following years of litigation before the state administrative agency and this Court,
16 are reasonable, and award \$104,852.60 in attorneys' fees.

17 Respectfully submitted,

18 Dated: July 17, 2009

19 DISABILITY RIGHTS LEGAL CENTER
20 Paula D. Pearlman
21 Shawna L. Parks
22 Heather McGunigle

23 /s/ Heather McGunigle

24

By: Heather McGunigle

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:11-cv-08145-CAS-SHx	Date	March 3, 2014
Title	TROY J. DUGAN V. COUNTY OF LOS ANGELES, ET AL.		

Present: The Honorable	CHRISTINA A. SNYDER		
CATHERINE JEANG	N/A	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		

Proceedings: (In Chambers:) PLAINTIFF’S MOTION FOR ATTORNEY FEES (Dkt. #234, filed Jan. 7, 2014)

I. INTRODUCTION AND BACKGROUND

Plaintiff Troy Dugan filed this action on September 30, 2011. Dkt. #1. Plaintiff filed the operative first amended complaint (“FAC”) on December 12, 2011. Dkt. #9. The FAC asserted claims for violations of constitutional rights under 42 U.S.C. § 1983 against defendants Los Angeles County, the Los Angeles County Sheriff’s Department (“LACS”), Los Angeles County Sheriff’s Deputies Christopher Nance, and Brett Binder, Sergeant John Stanley, and other personnel employed by the Los Angeles County Sheriff’s Department. *Id.*

Following a stipulated dismissal of several defendants, the case was tried to a jury in July and August 2013 against Deputy Brett Binder (“Binder”), former LACS Deputy Christopher Nance (“Nance”), and LACS Sergeant John Stanley (“Stanley”). Plaintiff asserted claims for excessive force and unlawful arrest under 42 U.S.C. § 1983 against defendants Nance and Binder, and asserted a claim for malicious prosecution under 42 U.S.C. § 1983 against all three defendants. Dkt. #200. The jury returned a special verdict in favor of plaintiff, and awarded \$850,000 in compensatory damages. *Id.* In a separate punitive damages phase of the trial, the jury awarded \$50,000 against each defendant. Dkt. #215. By order dated December 16, 2013, the Court denied defendants’ motions for judgment as a matter of law and for a new trial. Dkt. #229.

Plaintiff filed a motion for attorney’s fees on January 7, 2014. Dkt. #234. Defendants filed an opposition on January 28, 2014, dkt. #239, and plaintiff replied on February 4, 2014, dkt. #242. Plaintiff requests fees for the work of attorneys Todd Burns

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and Gabriel Cohan, as well as non-taxable costs. The Court held a hearing on February 24, 2014, and thereafter took the matter under submission. After considering the parties' arguments, the Court finds and concludes as follows.

II. LEGAL STANDARD

42 U.S.C. § 1988 provides that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). "The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. Accordingly, a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (internal quotations and citations omitted). In applying the "special circumstances" exception, the Court focuses on two factors: (1) whether allowing attorneys' fees would further the purpose of the statute and (2) whether the balance of equities favors or disfavors the denial of fees. Gilbert v. City of Westminster, 177 F.3d 839, 870 (9th Cir. 1999).

Where fee awards are appropriate and available, "the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." Hensley, 461 U.S. at 437. "The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party and submitted affidavits." Gates v. Gomez, F.3d 525, 534–35 (9th Cir. 1995).

The Court has an independent duty to determine whether the hours and hourly rates submitted by the fee applicant are "reasonable," and to reach its own "lodestar" value, which is "the number of hours reasonably expended . . . multiplied by a reasonable hourly rate." Hensley, 461 U. S. at 433. In Hensley, the Supreme Court set forth twelve factors that may be considered in determining both the lodestar value and a potential adjustment.¹

¹ The twelve factors identified are: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service properly; (4) whether accepting the case precluded the attorney from taking other work; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by

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Id. at 430. The lodestar amount is “presumptively the reasonable fee amount,” and should be adjusted upward or downward by a multiplier in “rare” or “exceptional” cases only. Van Gerwen v. Guarantee Mut. Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000).²

III. DISCUSSION

A. Reasonable Hourly Rate

In determining a reasonable hourly rate, a court should look to the prevailing market rates in the relevant legal community. Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 551 (2010). By multiplying this rate by the number of hours expended on the litigation, the fee award will “roughly approximate[] the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case.” Id. In determining a reasonable hourly rate, a district court should consider “the experience, skill, and reputation of the attorney requesting fees.” Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986); see also Moreno v. City of Sacramento, 534 F.3d 1106, 1114 (9th Cir. 2008) (factors to consider include the novelty and difficulty of the issues, the experience of counsel, and fee awards in similar cases). In addition, “contingency cannot be used to justify a fee enhancement or an inflated hourly rate” above the prevailing market rate for paying clients. Welch v. Metro. Life Ins. Co., 480 F.3d 942, 947 (9th Cir. 2007) (citations omitted).

1. Reasonable Hourly Rate for Todd Burns

Plaintiff’s counsel requests that Burns be compensated at an hourly rate of \$650. Mot. Att’y Fees at 6. In support of this request, plaintiff’s counsel supplies declarations from himself, Carol Sobel, Michael Marrinan, and Steven Hubacheck. Id., Exs. A, D-E;

the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Hensley, 461 U.S. at 430 n.3.

² The parties do not argue in favor of a lodestar multiplier, nor does the Court find that one is appropriate in this case.

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dk. #235. Burns states that he graduated from the University of Virginia School of Law in 1996, and thereafter clerked for Judge James B. Loken on the Eighth Circuit Court of Appeals. Burns Decl. ¶¶ 7-8. After clerking, he worked for one year at the firm of Wilson Sonsini Goodrich & Rosati in Palo Alto, California. *Id.* ¶ 9. He worked at the Federal Defenders of San Diego (“FSDSI”) from 1998 to 2011, serving as lead or sole counsel on “over a thousand” felony cases. *Id.* ¶ 10.³ He also held supervisory positions at FSDSI. *Id.* Burns left FSDSI in 2011 because he wished to expand his practice to include civil rights litigation. *Id.* ¶ 11. Burns has tried “approximately [40]” criminal cases in federal court, *id.* ¶ 13, and has served as lead or sole counsel in “over 50” appeals in the Ninth Circuit Court of Appeals, *id.* ¶ 14. Burns estimates that he has litigated Fourth Amendment-related issues in the federal courts in “over 150” cases. *Id.* ¶ 17.

Sobel is a former Senior Staff Counsel at the American Civil Liberties Union, and has maintained a private civil rights practice since 1997. Sobel Decl. ¶ 2. She has twice been qualified as an expert to testify at trial as to issues in non-profit legal practice, *id.* ¶ 4, and prepared “numerous” motions for attorney’s fees while employed by the ACLU, *id.* ¶ 7. Sobel is of the opinion that the rate sought by Burns is “well within the range of reasonable market rates for attorneys of comparable skill, experience, and reputation.” *Id.* ¶ 9. Sobel’s opinion is grounded “in large part” on fee awards in other cases in the Central District of California, including Communities Actively Living v. City of Los Angeles, 09-cv-00287-CBM-RZx (C.D. Cal. June 10, 2013), dkt. #255, in which Judge Marshall awarded fees at an hourly rate of \$665 to a 1999 law graduate. *Id.* ¶ 10.

Michael Marrinan graduated from law school in 1979, and began his career at FSDSI. Marrinan Decl. ¶¶ 2-3. He entered private practice in San Diego in 1985, and his practice since then has focused on “criminal defense and civil litigation involving police misconduct and civil rights.” *Id.* ¶ 4. He has tried “over 100” cases, and has handled “more than 200” civil rights cases. *Id.* ¶ 5. Marrinan states that he has known Burns since 2007, and he believes Burns to be a “highly skilled trial lawyer who has a wealth of experience litigating Constitutional issues, including in the Fourth Amendment context.” *Id.* ¶ 10. He is of the opinion that \$650 reflects the prevailing market rate for attorneys of comparable skill and experience to Burns. *Id.*

³ FSDSI is the “equivalent of a public defender[’s] office.” Marrinan Decl. ¶¶ 2-3.

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Steven Hubacheck is of counsel at the firm of Robbins Geller Rudman & Dowd LLP in San Diego. Hubacheck Decl. ¶ 1. He graduated from law school in 1987, and began working at FDSDI in 1989. *Id.* ¶ 5. During his time at FDSDI, he served as lead counsel in “hundreds of district court cases and appeals,” and tried “approximately thirty” cases. *Id.* He has argued “over [100] appeals,” including three in the United States Supreme Court. *Id.* ¶ 6. Hubacheck states that he supervised Burns during his time at FDSDI, and “worked closely with him on several cases.” *Id.* ¶ 9. Hubacheck is of the opinion that Burns is the best trial lawyer to have worked at FDSDI in the last thirty years, and that he is highly regarded among the members of the federal criminal defense bar in San Diego. *Id.* ¶¶ 10, 12.

Defendants respond that Burns has not established that \$650 is a reasonable hourly rate because he does not provide evidence of prior experience litigating civil rights cases. Opp. Mot. Att’y Fees at 2-3. Defendants provide a declaration from Robert Bruning, a partner at the law firm of Cooper & Bruning, LLP in Pasadena, California. Bruning graduated from law school in 1977, and specializes in serving as an expert witness in litigation matters involving fee disputes. Bruning Decl. ¶ 2. He has experience with business litigation, including tort and contractual disputes. *Id.* ¶ 3. Bruning is of the opinion that \$650 is not a reasonable hourly rate due to Burns’ lack of experience as a civil rights attorney. *Id.* ¶¶ 14-15. Bruning also states that Burns’ “guaranteed” hourly rates for federal appellate work in the Ninth Circuit and Criminal Justice Act (“CJA”) panel work would have been approximately \$185 and \$125, respectively. *Id.* ¶ 16. Based on his research, Bruning is of the opinion that “the rates which fee paying clients would actually pay to reasonable competent attorneys” in the Los Angeles area fall between \$275 and \$475 per hour. *Id.* ¶¶ 26-27. Bruning therefore opines that \$375 is a reasonable hourly rate for Burns. *Id.* ¶ 27.

After reviewing the declarations submitted by the parties, the Court finds that \$650 is a reasonable hourly rate for Burns. The Court reaches this conclusion because, while Burns was an inexperienced civil rights attorney at the time that this case was litigated, *see* Burns Decl. ¶ 11, he was an experienced trial lawyer and was familiar with Fourth Amendment doctrine, Burns Decl. ¶ 17, which was the area of law governing plaintiff’s claims for excessive force and unlawful arrest. It is therefore appropriate that Burns should be compensated at an hourly rate that reflects his Fourth Amendment knowledge and trial experience. \$650 properly reflects these considerations because it is consistent

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with awards to experienced trial lawyers.⁴ See Contreras v. City of Los Angeles, 2013 WL 1296763, at *3 (C.D. Cal. Mar. 28, 2013) (setting hourly rate of \$675 for experienced civil rights attorney who tried case in 2012); Allen v. City of Los Angeles, et al., 10-cv-4695-CAS-RCx, dkt. #133, at 29 (C.D. Cal. Nov. 19, 2012) (setting hourly rate of \$575 for experienced trial lawyer with unsubstantiated civil rights experience); Perrin v. Goodrich, 2012 WL 1698296, at *6 (C.D. Cal. May 24, 2012) (setting hourly rate of \$500 for experienced civil rights attorney who tried case in 2011); Vasquez v. Rackauckas, 2011 WL 3320482, at *2 (C.D. Cal. July 29, 2011) (setting hourly rate of \$600 for ACLU attorney who graduated from law school in 1994); Rauda v. City of Los Angeles, 2010 WL 5375958, at *6 (C.D. Cal. Dec. 20, 2010) (setting hourly rates of \$650, \$590, and \$525, respectively for three attorneys who tried case in 2010).

The Court is unpersuaded by the Bruning Declaration's discussion of hourly rates because it applies an incorrect legal standard—focusing on the “rates which fee paying clients would actually pay to reasonable[y] competent attorneys to handle such a matter in the general Los Angeles area”—rather than taking into account the actual “experience, skill, and reputation of the attorney requesting fees.” Compare Bruning Decl. ¶ 26 with Chalmers, 796 F.2d at 1210. Moreover, the cases relied on by Bruning are older cases that do not reflect current market rates. See Bruning Decl. ¶ 24. The Court is more persuaded by the most recent cases decided in this District.

2. Reasonable Hourly Rate for Gabriel Cohan

According to plaintiff's counsel, Cohan performed work on this case suitable for an attorney and also other work appropriately charged as paralegal work. Cohan seeks compensation at the hourly rate of \$390 for the work that he performed as an attorney, and \$190 for the work that he performed as a paralegal. The Court addresses each hourly rate in turn.

Cohan requests that he be compensated at an hourly rate of \$390 for work that he performed as counsel. Mot. Att'y Fees at 7-8. In support of this request, Cohan provides

⁴ This conclusion is bolstered by the fact that, as stated above, Sobel believes this rate to be reasonable based on her examination of fee awards in similar cases in this district.

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his own declaration, the Sobel Declaration, and declarations from Paul Hoffman, Shereen Charlick, and Todd Burns. Mot. Att’y Fees at 7-8, Exs. A, G-H; dkt. #235. Cohan graduated from the California Western School of Law in 2008, and was hired as a trial attorney for FDSOI immediately after graduating from law school. Cohan Decl. ¶¶ 7, 10. Cohan left the FDSOI in 2011 to assist his father with his law practice and also because Burns invited him to become Burns’ law partner. *Id.* ¶ 11. Prior to attending law school, Cohan worked as a paralegal and a contractor for several years, assisting CJA counsel and FDSOI counsel, including Burns. *Id.* ¶¶ 8-9. Burns states that Cohan was well regarded as an attorney at the FDSOI. Burns Decl. ¶ 28. Cohan’s supervisor at FDSOI, Chief Trial Attorney Shereen Charlick, states that Cohan is an “extraordinarily conscientious attorney” who, at FDSOI, “performed legal work with skills and ability beyond his number of years of experience” since graduating from law school. Charlick ¶ 4.

Sobel states that 2007 and 2008 law school graduates have been awarded fees at hourly rates ranging from \$385 to \$450, and on that basis opines that \$390 is a reasonable hourly rate for Cohan. Sobel Decl. ¶¶ 11-15. Paul Hoffman, a partner in the firm of Schonbrun DeSimone Seplow Harris & Hoffman LLP, states that the firm’s “standard rate” for a 2008 law school graduate is between \$400 and \$450 dollars. Hoffman Decl. ¶¶ 3-4. Hoffman states that he periodically reviews prevailing hourly rates in the legal community, and believes that his firm’s hourly rate structure is consistent with the “general level of hourly rates charged for general civil litigation by comparable firms practicing in Los Angeles.” *Id.* ¶ 6. Defendants do not provide evidence or argument that specifically responds to Cohan’s hourly rate request, other than Bruning’s opinion that \$275 would be a reasonable hourly rate for Cohan based on Bruning’s “survey and research.” Bruning Decl. ¶ 27. In light of the fact that the rate requested for Cohan’s work as an attorney is within the range identified by the Sobel declaration, and is slightly below the rate set forth in the Hoffman declaration, the Court finds that \$390 is a reasonable hourly rate for Cohan.

Plaintiff’s counsel also seek fees for the paralegal work performed by Cohan at an hourly rate of \$190. Mot. Att’y Fees at 8. In support of this request, plaintiff’s counsel cite the Sobel Declaration, which cites recent awards of paralegal fees at hourly rates ranging from \$170 to \$250. Sobel Decl. ¶ 16. Bruning asserts that \$150 is an appropriate hourly rate for this paralegal work, but does not appear to provide any support for his assertion. See Bruning Decl. ¶ 27. Based on the cases cited in the Sobel

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Declaration, and in light of the lack of contradictory evidence in the Bruning Declaration, the Court finds that \$190 is a reasonably hourly rate for Cohan's paralegal work. See, e.g., Vasquez, 2011 WL 3320482, at *2 (awarding fees to ACLU paralegals at rates of \$165 to \$200 per hour).

B. Reasonable Hours

Plaintiff's counsel contend that Burns reasonably expended 796.3 hours on this case, and that Cohan reasonably spent 698.1 hours on this case as an attorney, and 41.7 hours as a paralegal. Mot. Att'y Fees at 6-8; Burns Decl.; Cohan Decl. The Court finds that these hours are reasonable as a general matter, based on the fact that this case was sharply contested and involved substantial motion practice as to discovery matters, pre-trial motions, and post-trial motions. E.g., Burns Decl. ¶¶ 19-23.

Defendants do not challenge the reasonableness of the hours expended as a whole, but instead challenge specific blocks of hours. The Court addresses each of these challenges in turn.

1. Hours Expended During Travel to and from San Diego

Defendants argue that plaintiff's counsel should not be awarded fees for time spent traveling to and from San Diego, where plaintiff's counsel's office is located, because plaintiff has made no showing that Los Angeles-based counsel was unavailable. Opp. Mot. Att'y Fees at 4-5 (citing Fantasy v. Fogerty, 1995 WL 261504, at *6 (N.D. Cal. May 2, 1995)). According to defendants, plaintiff's counsel expended 152.8 hours traveling to and from San Diego, which increased plaintiff's counsel's total fee request by \$49,820.00, when calculated at the rates proposed by Bruning. Bruning Decl. ¶ 29; Ex. G. Plaintiff's counsel respond that plaintiff lives in Moreno Valley, Riverside, and that plaintiff should be provided some leeway in choosing his counsel. Reply Mot. Att'y Fees at 17. Additionally, plaintiff's counsel argue that substantial travel time would have been billed even if their offices were located in Los Angeles County due to the size of the county and pervasive traffic. Id.

While the Court agrees that billing for a certain portion of travel time is permissible, see, e.g., Doran v. Del Taco, Inc., 2005 WL 3560648, at *1-2 (C.D. Cal. June 9, 2005); Cotton v. City of Eureka, 889 F. Supp. 2d 1154, 1177 (N.D. Cal. 2012),

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the Court finds that plaintiff's counsel should not be permitted to bill all hours spent traveling to and from San Diego because plaintiff has not made a showing that local counsel was unavailable to handle this case. See Fantasy, 1995 WL 261504, at *6 (citing Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992)). Rather, plaintiff's counsel should be permitted to bill travel time that would have been expended if their offices were based within the Central District of California. According to the Bruning Declaration, Burns expended 78 hours on travel, and Cohan expended 74.8 hours on travel. Bruning Decl., Ex. G. These hours are comprised primarily of entries of between two and three hours expended for travel from San Diego to Los Angeles in order to appear in court, conduct investigation, or participate in other proceedings. Id. The Court finds that these hours should be reduced by 50 percent in order to account for the extra time spent traveling from San Diego, as opposed to Orange County, Los Angeles County, or Riverside County. A further reduction is not warranted in light of the fact that counsel could easily have spent one hour or more traveling each direction from a location within the Central District of California to the Courthouse located on Spring Street in downtown Los Angeles, or to other locations in Los Angeles County. Accordingly, the Court finds that the hours expended on travel should be reduced by 39 with respect to Burns, and 37.4 with respect to Cohan.

2. Clerical Tasks

Defendants contend that plaintiff's counsel unreasonably expended 28.6 hours on "clerical tasks," which, according to Bruning, are not a permissible component of a fee request. Bruning Decl. ¶ 30, Ex. H. Plaintiff's counsel respond that some of these entries reflect paralegal tasks performed by Cohan, and others reflect trial preparation tasks. Reply Mot. Att'y Fees at 19 (citing Cohan Reply Decl. ¶ 4). After reviewing the entries identified by Bruning, the Court concludes that the hours billed by Cohan for paralegal work should be reduced by 2.7 hours to account for "purely clerical or secretarial tasks" that he performed. See Davis v. City and County of San Francisco, 976 F.2d 1536, 1543 (9th Cir. 1992), vacated in part on other grounds, 984 F.2d 345. Additionally, 0.1 hours should be deducted from the time billed by Cohan for time billed as an attorney for "mail[ing] copy of complaint and related case initiation filings to client." Bruning Decl., Ex. H, at 1. These hours are not a permissible component of a fee request because they were expended on the mailing, filing, serving, and photocopying of documents. See Bruning Decl., Ex. H; Davis, 976 F.2d at 1543 (describing "filing of pleadings" as a clerical task that should not be included in hours reasonably expended in a lodestar

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calculation). The other hours identified by Bruning appear to have been reasonably expended by Cohan performing paralegal tasks or trial preparation tasks. See Bruning Decl., Ex. H; Cohan Reply Decl. ¶ 4; Missouri v. Jenkins, 491 U.S. 274, 288 (1989) (approving of awarding paralegal fees under 42 U.S.C. § 1988).

3. Vague Entries

Defendants argue that entries totaling 16.05 hours are too vague to form the basis for a fee award. Bruning Decl. ¶ 31, Ex. I. The Court has reviewed these entries. While some of them are not exceedingly clear, they are nonetheless sufficiently specific in order to determine the “general subject matter of [plaintiff’s counsel’s] time expenditures.” See Davis, 976 F.2d at 1542. The Court therefore declines to exclude these hours from the lodestar calculation.

C. Non-Taxable Costs

In addition to taxable costs recoverable under 28 U.S.C. § 1920, which are addressed in plaintiff’s separate application to the Clerk of Court, a prevailing party may recover “out-of-pocket expenses that would normally be charged to a fee paying client.” See Dang v. Cross, 422 F.3d 800, 814 (9th Cir. 2005). Defendants object to several items included in plaintiff’s counsel’s fee request as non-taxable costs. The Court addresses each item in turn.

1. Expert Witness Fees

Defendants object to fees totaling \$5,930.66 arising from plaintiff’s retention of police practices expert Roger Clark. Opp. Mot. Att’y Fees at 6-7. Plaintiff’s counsel do not object to cutting this amount from their fee request. Reply Mot. Att’y Fees at 23. The Court therefore reduces the total fee request by \$5,930.66.

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2. Hotel, Mileage, and Meal Expenses

Defendants object to \$5,800.22 in hotel charges, \$2,689.39 in mileage expenses, and \$591.16 in meal expenses on the grounds that such expenses would not have been incurred if plaintiff had hired local counsel. Opp. Mot. Att’y Fees at 7-8; Bruning Decl. ¶ 32, Ex. J. According to the Bruning Declaration’s itemized list of hotel charges, the \$5,800.22 figure consists of approximately 19 individual charges, ranging in size from \$79.91 for hotel room expenses from “trial prep meetings with client” to \$906.28 for a hotel room during the second through fifth trial days. *Id.* Ex. J. The nightly rate for each hotel room appears to have been less than \$200 for all of these hotel charges. The Court declines to reduce the hotel charges because the nightly rate appears reasonable, and the expenses were incurred during trial, depositions, or settlement conferences.⁵ Even if plaintiff’s counsel had offices in Los Angeles, it would have been reasonable for them to arrange to stay in a hotel near the courthouse during trial or multi-day depositions. Moreover, the expense of staying in a hotel is partially offset by the travel time that was saved, and therefore not included in the lodestar calculation. The Court similarly declines to reduce the amount requested for meal expenses because such expenses would have likely been incurred regardless of whether plaintiff’s counsel was based in Los Angeles. However, the Court will reduce mileage expenses by 50%, or \$1,344.70, to comport with the corresponding 50% reduction in hours expended on travel.

3. Miscellaneous Expenses

Defendants object to \$335.34 spent on court attire for plaintiff. Opp. Mot. Att’y Fees at 8. Plaintiff’s counsel does not object to eliminating this expense. Reply Mot. Att’y Fees at 22-23. The Court will therefore reduce the total fee request by \$335.34.

⁵ At oral argument, the Court inquired about a \$652.17 hotel expense that was incurred on March 20, 2013, and is described as “Hotel rooms expense re settlement conf.” Bruning Decl. Ex. J. Plaintiff’s counsel represented that this expense was incurred because plaintiff’s counsel arrived in Los Angeles the night before the settlement conference and stayed in a hotel. The Court concludes that this expense is reasonable because, even if plaintiff’s counsel lived in Los Angeles, they could have reasonably decided to spend the previous night in a hotel in light of the overall size of the Los Angeles metropolitan area and the resulting lengthy travel times.

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Defendants also object to \$43.94 for the purchase of a camping chair. Opp. Mot. Att’y Fees at 8. The Court finds that the \$43.94 paid for the purchase of a camping chair is not a reasonable expense because, even if used at trial, it was not necessary to prosecute the case.

D. Fees on Fees

Plaintiff’s counsel state that Cohan expended 11.6 hours and Burns expended 39.8 preparing the present motion, and also incurred \$90.82 in additional expenses. Reply Mot. Att’y Fees at 24-25, Exs. B-D. At oral argument, defense counsel objected to the inclusion of .8 hours that appeared to have been expended by Cohan on the preparation of the appeal in this matter. Plaintiff’s counsel agreed that, to the extent that the billing records reflect that this time was expended in preparing the appeal, it should not be included in the instant fee request. The Court has examined the billing records provided in support of plaintiff’s counsel’s fees on fees request, and concludes that defense counsel is correct that 0.8 hours was expended by Cohan in preparing the appeal, and not the instant fee request. See Reply Mot. Att’y Fees, Ex. C. Accordingly, the Court reduces Cohan’s total hours by 0.8. Defense counsel also objected at oral argument to 0.9 hours that appeared to have been expended by Cohan in preparing the bill of taxable costs. The Court finds that this time is properly included in this fee request because it appears to be the practice of courts in this circuit to permit recovery of such fees. E.g., Quesnoy v. Or. Dep’t of Corrections, 2012 WL 1155832, at *4 (D. Or. April 6, 2012).

Accordingly, the hours expended in preparing this motion appear to be reasonable (with the exception of the aforementioned 0.8 hours), and the Court will therefore include 10.8 hours for Cohan, 39.8 hours for Burns, and \$90.82 in expenses in calculating the total fee award. See, e.g., Thompson v. Gomez, 45 F.3d 1365, 1366 (9th Cir. 1995) (noting that fees recoverable under 42 U.S.C. § 1988 include “fees incurred while pursuing merits fees”).

IV. CONCLUSION

In accordance with the foregoing, plaintiff’s motion for attorney fees is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff is awarded a total of **\$803,237.37**, which is comprised of **\$787,371.00** in fees, and **\$15,866.37** in non-taxable costs.

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This award consists of the following amounts:

Merits Fees

Cohan (as attorney)	660.6 hours x \$390=\$257,634
Cohan (as paralegal)	39 hours x \$190=\$7,410
Burns	757.3 hours x \$650=\$492,245

Merits Expenses

\$15,775.55

Fees on Fees

Cohan (as attorney)	10.8 hours x \$390=\$4,212
Burns	39.8 hours x \$650=\$25,870

Expenses Incurred for Fees Motion

\$90.82

IT IS SO ORDERED.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD SANCHEZ, individually and
as successor-in-interest; GABRIEL
SANCHEZ, individually and as
successor-in-interest; MALACHI
SANCHEZ, individually and as
successor-in-interest; J.S., a minor by and
through his guardian ad litem, YVONNE
VARELA,

Plaintiffs,

vs.

COUNTY OF SAN BERNARDINO;
SERGEANT CASEY JILES; DEPUTY
ANTEKEIER; and DOES 1-10, inclusive,

Defendants.

) CASE NO. CV 10-09384 MMM (OPx)
)
) ORDER GRANTING IN PART AND
) DENYING IN PART PLAINTIFFS'
) MOTION FOR ATTORNEYS' FEES AND
) COSTS

1 Plaintiffs Donald Sanchez, Gabriel Sanchez, Malachi Sanchez’s, and Jacob Sanchez filed
2 a motion for attorneys’ fees and costs on November 14, 2013.¹ The defendant, San Bernardino
3 Police Sergeant Casey Jiles, opposes the motion.²

4
5 **I. FACTUAL AND PROCEDURAL BACKGROUND**

6 On December 9, 2010, plaintiffs sued Jiles, the County of San Bernardino (“the County”),
7 Deputy Andrew Antekeier, and various fictitious defendants.³ The complaint alleged eleven
8 causes of action based on Jiles’ February 10, 2010 shooting of plaintiffs’ father, Don Richard, and
9 Don Richard’s subsequent death.⁴ Seven of these claims were asserted under 42 U.S.C. §§ 1983
10 and 1985, and alleged unreasonable detention and arrest, excessive force, denial of medical care,
11 violation of substantive due process, conspiracy to violate civil rights, conspiracy to cover up
12 violations of Don Richard’s civil rights, and municipal and supervisory liability under *Monell*.
13 The complaint also alleged state law claims for false arrest and false imprisonment, battery,
14 negligence, and violation of the Bane Civil Rights Act, California Civil Code § 51.7.

15 On June 6, 2011, after plaintiffs filed a notice of non-opposition, the court granted
16 defendants’ motion to dismiss, dismissing their *Monell* claim against Jiles and Antekeier and all
17 of the state law claims.⁵ On February 24, 2012, the court dismissed Antekeier pursuant to the
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20 ¹Second Motion for Attorneys’ Fees (“Motion”), Docket No. 259 (Nov. 14, 2013).
21 Because the decedent, Donald Richard Sanchez, Sr. and several of the plaintiffs share the same
22 last name, for clarity, the court refers to the decedent in this order, as it has in prior orders, as
23 “Don Richard.”

24 ²Opposition to Motion for Attorneys’ Fees (“Opposition”), Docket No. 270 (Jan. 31,
25 2014).

26 ³Yvonne Varela sued as guardian ad litem for plaintiff Jacob Sanchez, who was a minor
27 when the action was filed.

28 ⁴Complaint, Docket No. 3 (Dec. 9, 2010).

⁵Order Granting Defendants’ Motion to Dismiss, Docket No. 13 (June 6, 2011).

1 parties' stipulation.⁶ On February 29, 2012, also pursuant to stipulation, the court dismissed
2 plaintiffs' claims for unreasonable detention and arrest, denial of medical care, conspiracy to
3 violate civil rights, conspiracy to cover up violations of Don Richard's civil rights, and municipal
4 and supervisory liability under *Monell*.⁷ As a result of the dismissal of the *Monell* claim, the
5 parties then stipulated to dismiss the County, which the court did.⁸

6 Following the entry of these orders, Jiles was the sole remaining defendant. The remaining
7 claims were plaintiffs' claim that Jiles used excessive force in violation of the Fourth Amendment
8 when he shot Don Richard, and that Jiles violated plaintiffs' substantive due process rights by
9 interfering with their familial relationship with their father. These two claims were tried to a jury
10 between June 26 and June 29, 2012. On July 3, 2012, the jury returned a verdict in favor of Jiles
11 on plaintiffs' due process claim but could not reach a unanimous verdict on plaintiffs' excessive
12 force claim.⁹ The court directed the parties to participate in a settlement conference before
13 Magistrate Judge Jay C. Gandhi,¹⁰ which they did on November 1, 2012.¹¹ The case did not
14 settle.¹² As a result, the excessive force claim was retried between January 8 and January 14,
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18 ⁶Order Granting Stipulation to Dismiss Individual Defendant Deputy Antekeier, Docket No.
19 33 (Feb. 24, 2012).

20 ⁷Order Granting Stipulated Dismissal with Prejudice of the First, Third, Fifth, Sixth, and
21 Seventh Claims, and Plaintiffs' Claim Defendants Deprived, or Conspired to Deprive, Plaintiffs'
22 Decedent's Rights to Equal Protection and Immunities Because of His Hispanic Race, Docket No.
34 (Feb. 29, 2012). See also Pre-Trial Conference Order, Docket No. 96 (Apr. 30, 2011).

23 ⁸Order Granting Joint Stipulation to Dismiss County of San Bernardino, Docket No. 162
24 (June 28, 2012).

25 ⁹Jury Verdict from First Trial ("First Verdict"), Docket No. 175 (July 3, 2012).

26 ¹⁰Order Regarding Settlement Conference, Docket No. 181 (Aug. 2, 2012).

27 ¹¹Minutes of Settlement Conference, Docket No. 189 (Nov. 1, 2012).

28 ¹²Second Order Regarding Settlement Conference, Docket No. 190 (Nov. 8, 2012).

1 2013. The second jury returned a unanimous verdict in favor of plaintiffs and awarded
2 \$200,000.00 in damages.¹³

3 On January 29, 2013, Jiles filed a motion for judgment as a matter of law under Rule 50(b)
4 of the Federal Rules of Civil Procedure, arguing that he was entitled to qualified immunity.¹⁴ On
5 September 12, 2013, the court denied the motion,¹⁵ and on October 30, 2013, it entered judgment
6 in favor of plaintiffs.¹⁶ On November 13, 2013, plaintiffs filed a motion for attorneys' fees.¹⁷ The
7 court struck the motion on November 14, 2013, because plaintiffs had set it for hearing on a date
8 that was closed on the court's calendar.¹⁸ That same day, plaintiffs filed a new motion for
9 attorneys' fees, setting the motion for hearing on February 24, 2014.

11 II. DISCUSSION

12 A. Whether the Court Should Deny the Motion on Procedural Grounds

13 Jiles argues first that the court should deny plaintiffs' motion on procedural grounds
14 because it was untimely, because plaintiffs' attorney did not meet and confer with opposing
15 counsel prior to filing the motion, because the motion does not include the time and date of the
16 hearing on the first page, and because it does not state that counsel met and conferred before the
17 motion was filed.

21 ¹³Jury Verdict from Second Trial ("Second Verdict"), Docket No. 232 (Jan. 15, 2013).

22 ¹⁴Renewed Motion for Judgment as a Matter of Law, Docket No 236 (Jan. 29, 2013).

23 ¹⁵Order Denying Motion for Judgment as a Matter of Law ("JMOL Order"), Docket No.
24 253 (Sept. 12, 2013).

25 ¹⁶Judgment on the Verdict for the Plaintiff ("Judgment"), Docket No. 254 (Oct. 30, 2013).

26 ¹⁷Plaintiffs' First Motion for Attorneys' Fees, Docket No. 257 (Nov. 13, 2013).

27 ¹⁸Order Striking Plaintiffs' First Motion for Attorneys' Fees, Docket No. 248 (Nov. 14,
28 2013).

1 **1. Whether Plaintiffs’ Motion Is Untimely**

2 The procedure for requesting attorneys’ fees is set forth in Rule 54(d)(2) of the Federal
3 Rules of Civil Procedure. That Rule provides that “[a] claim for attorney’s fees and related
4 nontaxable expenses must be made by motion unless the substantive law requires those fees to be
5 proved at trial as an element of damages. . . . Unless a statute or a court order provides
6 otherwise, the motion must[] be filed no later than 14 days after the entry of judgment.”
7 FED.R.CIV.PROC. 54(d)(2); see also CA CD L.R. 54-10 (“Any motion or application for
8 attorneys’ fees shall be served and filed within fourteen (14) days after the entry of judgment or
9 other final order, unless otherwise ordered by the Court”). “Although ‘the 14-day period [set
10 forth in Rule 54] is not jurisdictional, the failure to comply [with Rule 54] should be sufficient
11 reason to deny the fee motion, absent some compelling showing of good cause.’” *Kona*
12 *Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 889-90 (9th Cir. 2000) (quoting 10 James
13 Wm. Moore et al., *MOORE’S FEDERAL PRACTICE* § 54.151[1] (3d ed. 2000) (second alteration
14 original)).

15 Judgment was entered in this case on October 30, 2013. Plaintiffs’ motion for attorneys’
16 fees should therefore have been filed on November 13, 2013. Plaintiffs in fact filed a motion for
17 attorneys’ fees that day, but, as noted, the clerk struck the motion on November 14, 2013 because
18 it was set for a date that was closed on the court’s calendar. The text entry striking the motion
19 also noted that plaintiffs’ motion had not included an indication on the first page of the date and
20 time of the hearing as required by Local Rule 7-4.¹⁹ Plaintiffs refiled the motion that day. Jiles
21 argues that plaintiffs have not shown good cause for a late filing because plaintiffs’ need to refile
22 the motion was due to their failure to comply with the Local Rules and failure to have ascertained
23 the court’s closed motion days prior to setting the motion for hearing.²⁰

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26 ¹⁹Local Rule 7-4 provides that “[o]n the first page of the notice of motion and every other
27 document filed in connection with the motion, there shall be included, under the title of the
document, the date and time of the motion hearing.” CA C.D. L.R. 7-4.

28 ²⁰Opposition at 4-5.

1 Plaintiffs' motion was not untimely under the Federal Rules of Civil Procedure, however.
2 Rule 5(d)(4) states that "[t]he clerk must not refuse to file a paper solely because it is not in the
3 form prescribed by these rules or by a local rule or practice." FED.R.CIV.PROC. 5(d)(4). See
4 *Klemm v. Astrue*, 543 F.3d 1139, 1143 (9th Cir. 2008) (holding that the clerk was obligated to
5 accept appellant's notice of appeal for filing, even though appellant failed to comply with local
6 filing rules, citing FED.R.CIV.PROC. 5(d)(4)); *MD Propertyco, LLC v. Mad Dog Saloon AZ,*
7 *L.L.C.*, No. CV-12-2516-PHX-LOA, 2012 WL 5984950, *3 (D. Ariz. Nov. 28, 2012) ("[T]he
8 Clerk of Court is not authorized to strike a non-conforming pleading or filing," citing
9 FED.R.CIV.PROC. 5(d)(4)); *Zepeda v. Walker*, 564 F.Supp.2d 1179, 1183 (C.D. Cal. 2008) ("[A]
10 pleading may be deemed filed even if the pleading is not in compliance with filing rules," citing
11 *Ordonez v. Johnson*, 254 F.3d 814, 816 (9th Cir. 2001) ("We have previously held that a
12 complaint is filed when it is placed in the actual or constructive custody of the clerk [of the court],
13 despite any subsequent rejection by [the clerk] of the pleading for non-compliance with a provision
14 of the local rules" (internal quotation omitted; alterations original), and *Artuz v. Bennett*, 531 U.S.
15 4, 8 (2000)). For that reason, although the motion may have failed to comply with the local rules
16 or was otherwise deficient, it was not untimely. It was deemed filed when plaintiffs docketed it
17 on November 13, 2013.

18 2. Whether Plaintiffs Failed to Comply with Local Rule 7-3

19 Local Rule 7-3 provides that "[i]n all cases . . . , counsel contemplating the filing of any
20 motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the
21 substance of the contemplated motion and any potential resolution. The conference shall take
22 place at least seven (7) days prior to the filing of the motion." CA CD L.R. 7-3. Plaintiffs report
23 that they met and conferred with opposing counsel prior to filing the motion. Dale Galipo has
24 submitted a declaration that states:

25 "Prior to filing the instant motion for attorney fees I had numerous discussions with
26 Defense counsel Dana A. Fox regarding the pending attorney fees motion and the
27 settlement of the case, but no resolution could be reached. Since no resolution
28

1 could reached prior to the final date to file the attorney fees motion I timely filed
2 Plaintiffs['] motion for attorney fees on November 13, 2013.”²¹
3 Jiles has adduced no evidence contradicting this statement; he merely offers attorney argument that
4 plaintiffs failed to meet and confer. This is insufficient to rebut Galipo’s sworn statement that he
5 complied with the meet and confer requirement. Accordingly, the court cannot find that failure
6 to conduct a prefiling conference warrants denial of the motion.

7 **3. Whether the Court Should Deny Plaintiffs’ Motion Due to Procedural**
8 **Errors**

9 Under Local Rule 83-7, the court can sanction a party as it deems appropriate for “[t]he
10 violation of or failure to conform to any of the[] Local Rules” if the court finds the failure was
11 “willful, grossly negligent, [] reckless . . . bad faith and/or a willful disobedience of a court
12 order.” CA CD L.R. 83-7. Plaintiffs concede they did not comply with Local Rule 7-3 because
13 they failed to include a statement in the notice of motion that “[the] motion [was] made following
14 the conference of counsel pursuant to L.R. 7-3, which took place on (date).” They also
15 acknowledge that they did not comply with Local Rule 7-4 because they failed to note on the first
16 page of the motion the date and time of the motion hearing.²² The court cannot conclude,
17 however, that plaintiffs’ failure to adhere to these rules constitutes willfulness, recklessness or bad
18 faith. While the omissions may have been the result of negligence, the court declines to impose
19 the harsh sanction of denying plaintiffs attorneys’ fees because of two procedural mistakes. See
20 *Brodie v. Board of Trustees of California State University*, No. CV 12-07690 DDP (AGRx), 2013
21 WL 4536242, *1 (C.D. Cal. Aug. 27, 2013) (considering the merits of a motion despite counsel’s
22 failure to comply with Local Rule 7-3); *Williams-Ilunga v. Gonzalez*, No. CV 12-08592 DDP
23 (AJWx), 2013 WL 571795 at *4 (same); *Reed v. Sandstone Properties, L.P.*, No. CV 12-05021
24 MMM (VBKx), 2013 WL 1344912, *6 (C.D. Cal. Apr. 2, 2013) (electing to consider a motion

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26 ²¹Reply in Support of Motion for Attorneys’ Fees (“Reply”), Docket No. 271 (Feb. 10,
27 2014), Exh. 1 (Reply Declaration of Dale K. Galipo in Support of Motion for Attorneys’ Fees
28 (“Galipo Reply Decl.”), ¶ 4).

²²Reply at 3-4.

1 even though the prefiling conference was untimely); *Thomas v. U.S. Foods, Inc.*, No.
2 8:12-cv-1221-JST (JEMx), 2012 WL 5634847, *1 n. 1 (C.D. Cal. Nov. 14, 2012) (considering
3 a motion despite the fact that the movant had not met and conferred with his opponent); *Wilson-*
4 *Condon v. Allstate Indemnity Co.*, No. CV 11-05538 GAF (PJWx), 2011 WL 3439272, *1 (C.D.
5 Cal. Aug. 4, 2011) (same).

6 **B. Whether the Court Should Grant Jiles' *Ex Parte* Application for an Order**
7 **Allowing Him to File Evidentiary Objections**

8 On February 14, 2014, Jiles filed an *ex parte* application seeking an order permitting him
9 to file objections to the declarations that plaintiffs' counsel filed in support of their reply.²³
10 Concurrently with his application, Jiles proffered proposed objections to the declarations. Jiles
11 contends that counsel submitted new evidence by (1) requesting that the court award additional
12 attorneys' fees incurred in connection with preparation of the reply; (2) submitting a recent case
13 that awarded attorneys' fees to counsel; (3) stating that Jiles made no meaningful offer to settle
14 the case; (4) clarifying Navab's role at the second trial; (5) explaining the applicable time period
15 covered by the Schlueters' request for fees in another case; and (6) expanding on Peter Schlueter's
16 civil trial experience and his role in this case.

17 The court can refuse to consider evidence or argument offered for the first time in reply.
18 *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider
19 arguments raised for the first time in a reply brief"). The court can properly consider evidence
20 and argument offered in reply that is responsive to points raised in the non-moving party's
21 opposition, however. See *United States v. Taibi*, No. 10-CV-2250 JLS, 2012 WL 553143, *4
22 (S.D. Cal. Feb. 21, 2012) ("[B]ecause the[] documents respond directly to Defendant's
23 allegations made in his opposition brief, the Court finds it may properly consider this rebuttal
24 evidence even though it was offered for the first time in Plaintiff's reply brief," citing *EEOC v.*
25 *Creative Networks, LLC and Res-Care, Inc.*, No. CV-05-3032-PHX-SMM, 2008 WL 5225807,
26

27 ²³*Ex Parte* Application for Order to File Evidentiary Objections ("Application"), Docket
28 No. 272 (Feb. 14, 2014).

1 *2 (D. Ariz. Dec. 15, 2008) (reviewing the rule that a party may not provide “new” evidence in
2 a reply and deprive the opposing party of an opportunity to respond to it, but denying a motion
3 to strike because the challenged evidence was not “new,” as it properly rebutted arguments first
4 raised in opposition to the motion for summary judgment)); *Aguirre v. Munk*, No. C 09-763
5 MHP, 2011 WL 2149087, *13 (N.D. Cal. June 1, 2011) (“There was no new evidence in
6 defendants’ reply. Any shift in focus between the motion and the reply was responsive to
7 Aguirre’s arguments and ‘evidence’ in opposition that were different from the allegations in the
8 amended complaint”); *Bell v. Santa Ana City Jail*, No. SA CV 07-1218-ODW, 2010 WL 582543,
9 *1 n. 3 (C.D. Cal. Feb. 16, 2010) (“The Court concurs with defendant that the evidence adduced
10 in her Reply raises no new issues and consists solely of a response to the arguments that plaintiff
11 first raised in his Opposition”); *QBAS Co., Ltd. v. C Walters Intercoastal Corp.*, No. SACV
12 10-406 AG, 2010 WL 7785995, *3-4 (C.D. Cal. Dec. 16, 2010) (“Defendants argue that new
13 evidence submitted for the first time with a Reply brief should not considered. This issue arises
14 frequently, and it’s sometimes tricky to distinguish between impermissible ‘new’ evidence in a
15 reply and evidence that is permissibly responsive to an argument made in the opposing party’s
16 opposition. In this case, the issue is not so tricky. Plaintiffs’ evidence . . . submitted with their
17 Reply is clearly permissible evidence responsive to Defendants’ . . . arguments. Thus, the . . .
18 objections are OVERRULED”).

19 The court may also consider new evidence offered in reply if it gives the opposing party
20 an opportunity to respond. *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040-41 (9th Cir.
21 2003) (indicating that the court may consider new issues raised in reply if it gives the opposition
22 an opportunity to respond); *Glenn K. Jackson, Inc. v. Roe*, 273 F.3d 1192, 1202 (9th Cir. 2001)
23 (stating that the “district court has discretion to consider [a new] issue even if it was raised in a
24 reply brief”); *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (“[W]here new evidence
25 is presented in a reply to a motion for summary judgment, the district court should not consider
26 the new evidence without giving the non-movant an opportunity to respond”).

1 Even assuming, therefore, that the reply declarations offer new evidence, the court can
2 properly consider their contents so long as Jiles has had an opportunity to respond to them. Jiles'
3 objections afford him such an opportunity, as they contain topic-by-topic objections to the
4 declarations. The clerk is therefore directed to accept the objections for filing, and the court will
5 consider *infra* both the declarations and the objections.

6 **C. Whether Plaintiffs Can Recover Attorneys' Fees**

7 As noted, the procedure for requesting attorneys' fees is set forth in Rule 54(d)(2) of the
8 Federal Rules of Civil Procedure. While the rule specifies that requests shall be made by motion
9 "unless the substantive law governing the action provides for the recovery of . . . fees as an
10 element of damages to be proved at trial," the rule does not itself authorize the awarding of fees.
11 "Rather, [Rule 54(d)(2)] and the accompanying advisory committee comment recognize that there
12 must be another source of authority for such an award . . . [in order to] give[] effect to the
13 'American Rule' that each party must bear its own attorneys' fees in the absence of a rule, statute
14 or contract authorizing such an award." *MRO Communications, Inc. v. AT&T*, 197 F.3d 1276,
15 1281 (9th Cir. 1999).

16 Under § 1988, the prevailing party in a § 1983 lawsuit can recover reasonable attorneys'
17 fees. 42 U.S.C. § 1988(b). In *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), the Supreme
18 Court considered the meaning of the term "prevailing party." It concluded that plaintiffs are
19 considered the "prevailing party" if they "succeed on any significant issue in litigation which
20 achieves some of the benefit of the parties sought in bringing suit." *Id.*; see *Buckhannon Bd. &*
21 *Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603-04 (2001) ("Our
22 '[r]espect for [the] ordinary language [of § 1988] requires that a plaintiff receive at least some
23 relief on the merits of his claim before he can be said to prevail," quoting *Hewitt v. Helms*, 482
24 U.S. 755, 760 (1987)).

25 In subsequent cases, the Supreme Court continued to clarify the definition of "prevailing
26 party." In *Farrar v. Hobby*, 506 U.S. 103, 111 (1992), it held that, "to qualify as a prevailing
27 party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. The
28 plaintiff must obtain an enforceable judgment against the defendant from whom fees are sought,

1 or comparable relief through a consent decree or settlement. . . . In short, a plaintiff ‘prevails’
2 when actual relief on the merits of his claim materially alters the legal relationship between the
3 parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Id.*
4 at 111-12.

5 Jiles contends that plaintiffs are not prevailing parties. He argues that he prevailed on
6 many significant aspects of the case, citing the fact that the court granted his motion to dismiss,
7 all of plaintiffs’ state law claims and the *Monell* claims against Jiles and Antekeier, that plaintiffs
8 voluntarily dismissed Antekeier and the County of San Bernardino as defendants, and that the first
9 jury returned a verdict in favor of Jiles on plaintiffs’ interference with familial relations claim.²⁴
10 Jiles is wrong, as it is clear that plaintiffs satisfy the “prevailing party” standard set forth in
11 *Hensley* and *Farrar*. One need only look to the jury verdict and judgment to reach this
12 conclusion. The jury in the second trial found that “Casey Jiles use[d] excessive force against
13 Donald Sanchez, Sr.” and awarded plaintiffs \$200,000 in damages.²⁵ The judgment reflected
14 “judgment on the verdict *for the plaintiff(s)*,” and “ordered and adjudged that the plaintiff(s) . . .
15 recover of the defendant[] Sergeant Casey Jiles the sum of . . . \$200,000.”²⁶ Because plaintiffs
16 “obtain[ed] at least some relief on the merits of [their] claim[s],” they are the prevailing parties.
17 See *Farrar*, 506 U.S. at 111.

18 The court also determines that plaintiffs are entitled to an award of reasonable attorneys’
19 fees because Jiles has not shown that any special circumstances merit their outright denial. In
20 *Hensley*, the Supreme Court noted that it was within the district court’s discretion whether to allow
21 reasonable attorneys’ fees to prevailing parties under § 1988. 461 U.S. at 426. The court’s
22 discretion under § 1988, however, “is very narrow and . . . fee awards should be the rule rather
23 than the exception.” *Mendez v. County of San Bernardino*, 540 F.3d 1109, 1126 (9th Cir. 2008)
24 (internal quotation marks omitted). This is because denying a prevailing party attorneys’ fees

25
26 ²⁴Opposition at 7-8.

27 ²⁵Second Verdict at 1-2.

28 ²⁶Judgment at 1.

1 could contravene Congress' intent in passing § 1988, which was “to attract competent counsel
2 to prosecute civil rights cases.” Stated differently, denying fees could be a disincentive to
3 counsel considering whether to undertake to represent civil rights plaintiffs. *Barnard v. Theobald*,
4 721 F.3d 1069, 1077 (9th Cir. 2013) (citing *Mendez*, 540 F.3d at 1126).

5 Consequently, only in special circumstances should a district court deny a prevailing
6 party's fee request under § 1988 outright. A district court “evaluate[s] whether special
7 circumstances exist by asking whether ‘(1) allowing attorney's fees would further the purposes of
8 § 1988 and (2) whether the balance of equities favors or disfavors the denial of fees.’” *Mendez*,
9 540 F.3d at 1126. Only where any award of attorneys' fees would be unreasonable should the
10 court decline to award fees altogether. *Thomas v. City of Tacoma*, 410 F.3d 644, 648 (9th Cir.
11 2005) (noting that “there are occasions when a prevailing party's reasonable fee is no fee at all”).
12 In *Farrar*, the Supreme Court found such a special circumstance and affirmed the circuit court's
13 decision to deny all attorneys' fees because, although the plaintiff had technically prevailed on his
14 claims by proving a constitutional violation and being awarded nominal damages, allowing him
15 to recover attorneys' fees when he had failed to prove that he suffered any actual damages was
16 unreasonable. *Farrar*, 506 U.S. at 115. Justice O'Connor, who provided the necessary fifth vote,
17 and wrote separately “only to explain more fully why, in [her] view, it [was] appropriate to deny
18 fees in [that] case,” noted that “chimerical accomplishments” such as “a purely technical or *de*
19 *minimis* victory” were not the kind of legal change Congress intended to promote in enacting §
20 1988. *Id.* at 116, 118.

21 Jiles contends that special circumstances exist in this case because plaintiffs' requested fee
22 award of \$932,321.00 is not proportional to their recovery of \$200,000.²⁷ *Farrar*, however, does
23 not stand for the proposition that a district court should deny outright any fee request that it
24 believes is disproportionate to a prevailing party's recovery. Rather, as noted, *Farrar* indicates
25 that in certain circumstances, it may be reasonable to decline to award fees if a plaintiff's recovery
26 has been merely technical or *de minimis*: the focus is on the nature of the plaintiff's recovery, not

27
28 ²⁷Opposition at 8.

1 on whether the fees requested are disproportionate to that recovery. See *Farrar*, 506 U.S. at 115
2 (“When a plaintiff recovers only nominal damages because of his failure to prove an essential
3 element of his claim for monetary relief, the only reasonable fee is usually no fee at all”); *Mendez*,
4 540 F.3d at 1126 (holding that a denial of all attorneys’ fees under *Farrar* is “appropriate only
5 where ‘the plaintiff’s success is purely technical or *de minimis*,’” citing *Morales v. City of San*
6 *Rafael*, 96 F.3d 359, 363 (9th Cir. 1996)).

7 Because the focus is on the nature of plaintiff’s recovery, and not a comparison of that
8 recovery to requested fees, the Ninth Circuit has consistently rejected the argument that giving a
9 prevailing plaintiff a windfall by allowing him or her to recover a large fee award when the
10 recovery has been a much smaller – but not *de minimis* – amount of damages is a special
11 circumstance that justifies denying all fees. In *Thomas*, for example, the Ninth Circuit reversed
12 a district court’s decision not to award fees to a prevailing plaintiff. 410 F.3d at 648. The case
13 began with four plaintiffs alleging multiple causes of action against 27 defendants; in the end, only
14 one plaintiff prevailed on one claim against one defendant. *Id.* at 646-47. The jury awarded the
15 prevailing plaintiff \$15,000 in compensatory damages and \$20,000 in punitive damages. *Id.* at
16 647. Counsel requested \$488,174.35 in fees. *Thomas v. City of Tacoma (Thomas II)*, No.
17 C01-5138 RBL, 2005 WL 2254005, *5 (W.D. Wash. Sept. 16, 2005). The Ninth Circuit held
18 that Thomas’ \$35,000 recovery was not *de minimis* and that the district court had therefore erred
19 in refusing to award any fees under the special circumstances exception. *Id.* The court rejected
20 the district court’s determination that it was appropriate to deny fees under the special
21 circumstances exception because allowing any fees would result in a windfall to plaintiff. It
22 stated:

23 “[Section] 1988 is a product of balancing [Congress’] concern[] [with granting a
24 windfall to plaintiffs against the need to attract competent counsel to prosecute civil
25 rights cases] by only permitting reasonable fees. To require Defendants to pay
26 reasonable attorney’s fees relevant to the prosecution of the successful claim does
27 not create a windfall, but fulfills the Congressional purpose of § 1988(b).”
28 *Thomas*, 410 F.3d at 648.

1 For these reasons, even if plaintiffs' requested fees are disproportionate to their recovery,
2 a question the court considers *infra* in assessing the reasonableness of the fee request, the fact that
3 plaintiffs recovered \$200,000 in actual damages for pain and suffering – \$165,000 more than the
4 plaintiff in *Thomas* – makes their recovery substantive, rather than merely technical or *de minimis*.
5 Jiles identifies no reason other than proportionality why the court should decline to award fees
6 altogether. Accordingly, the court concludes that plaintiffs are entitled to recover reasonable
7 attorneys' fees under § 1988.

8 **D. Whether the Court Should Award the Amount of Fees Requested by Plaintiffs**

9 Plaintiffs request that the court award fees of \$932,321.²⁸ The first step in determining a
10 reasonable fee award under § 1988 is to calculate the “lodestar” amount. *Morales*, 96 F.3d at
11 364. This is done by multiplying the total number of hours reasonably expended on the matter
12 by a reasonable hourly rate. See *Hiram C. v. Manteca Unified Sch. Dist.*, No. CV S 03-2568
13 WBS KJM, 2004 WL 4999156, *1 (E.D. Cal. Nov. 5, 2004) (citing *Noyes v. Grossmont Union*
14 *High Sch.*, 331 F.Supp.2d 1233, 1248 (S.D. Cal. 2004), in turn citing *Hensley*, 461 U.S. at 433);
15 *Neisz v. Portland Public Sch. Dist.*, 684 F.Supp. 1530, 1534 (D. Or. 1988) (citing *Miller v. Los*
16 *Angeles County Bd. of Educ.*, 827 F.2d 617, 621 (9th Cir. 1987)); see also, e.g., *I.B. v. N.Y. City*
17 *Dep't of Educ.*, 336 F.3d 79, 80 (2d Cir. 2003) (per curiam); *Jason D.W. ex rel. Douglas W. v.*
18 *Houston Indep. Sch. Dist.*, 158 F.3d 205, 208 (5th Cir. 1998); *Phelan v. Bell*, 8 F.3d 369, 374
19 (6th Cir. 1993). The lodestar “presumptively provides an accurate measure of reasonable
20 attorney's fees.” See *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994); *Clark v. City of Los*
21 *Angeles*, 803 F.2d 987, 990 (9th Cir. 1986).

22 **1. Whether Counsel's Requested Rates Are Reasonable**

23 “The hourly rate for successful civil rights attorneys is to be calculated by considering
24 certain factors, including the novelty and difficulty of the issues, the skill required to try the case,
25 whether or not the fee is contingent, the experience held by counsel, and fee awards in similar
26 cases.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1114 (9th Cir. 2008). Prosecuting an

27
28 ²⁸Motion at 18.

1 excessive force case against a police officer that involves the use of deadly force requires skilled
2 advocacy, especially where, as here, the outcome of the case is not obvious. Plaintiffs' counsel,
3 moreover, litigated the case on a contingency fee basis.²⁹ These factors weigh in favor of finding
4 that counsel's requested rates are reasonable.

5 To assist the court in calculating the lodestar, the plaintiffs must submit "satisfactory
6 evidence . . . that the requested rates are in line with those prevailing in the community for similar
7 services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v.*
8 *Stenson*, 465 U.S. 886, 895-96 n. 11 (1984). The relevant community is that in which the district
9 court sits. See *Schwartz v. Sec'y of Health and Human Serv.*, 73 F.3d 895, 906 (9th Cir. 1995).
10 Declarations from local attorneys who practice in the same area of law regarding the prevailing
11 market rate in the relevant community suffice to establish a reasonable hourly rate. See *Camacho*,
12 523 F.3d at 980 ("As we have noted, '[a]ffidavits of the plaintiffs' attorney[s] and other attorneys
13 regarding prevailing fees in the community, and rate determinations in other cases . . . are
14 satisfactory evidence of the prevailing market rate,'" citing *United Steelworkers of America v.*
15 *Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990)); *Widrig v. Apfel*, 140 F.3d 1207, 1209
16 (9th Cir. 1998) (stating that it is true "that declarations of the prevailing market rate in the relevant
17 community are sufficient to establish a reasonable hourly rate"); *Guam Soc'y of Obstetricians &*
18 *Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir. 1996) (noting that declarations from attorneys
19 in the community can provide adequate proof of the reasonableness of counsel's rates). See also
20 *Earthquake Sound Corp. v. Bumper Industries*, 352 F.3d 1210, 1215 (9th Cir. 2003) (discussing
21 the affidavit of "an attorney practicing in the same region as Earthquake's attorneys," which
22 opined that "Earthquake's attorney rates were reasonable and customary").

23 Courts can also use survey data to evaluate the reasonableness of attorneys' rates. See *Fish*
24 *v. St. Cloud State Univ.*, 295 F.3d 849, 852 (8th Cir. 2002) ("The parties presented two surveys
25 of hourly rates, one reporting fees received by seven Twin Cities class action firms and the other
26

27 ²⁹Motion, Exh. 2 (Declaration of Peter Schlueter in Support of Motion for Attorneys' Fees
28 ("P. Schlueter Decl."), ¶ 6).

1 reporting fees received by sixty-two firms doing a variety of work around the state. The court set
2 individual hourly rates at the median of the class action survey and near the upper limit of the
3 statewide survey, also taking into account the number of years an attorney had been admitted to
4 practice”); *American Petroleum Inst. v. United States EPA*, 72 F.3d 907, 912 (D.C. Cir. 1996)
5 (“Petitioners have provided support for the reasonableness of their rates through affidavits and a
6 survey of rates and we hold that these rates are reasonable”); *Martin v. University of South*
7 *Alabama*, 911 F.2d 604, 607 (11th Cir. 1990) (“Based on the testimony and survey produced by
8 plaintiffs the reasonable non-contingent hourly rate for civil rights lawyers in the relevant market
9 (Alabama) was found to be \$135 to \$150 per hour for senior counsel and \$105 to \$115 per hour
10 for junior counsel”).

11 Plaintiffs request fees for work performed by attorneys Dale K. Galipo, Kaveh Navab,
12 Adrienne Quarry, John C. Fattahi, Hilary Rau, Peter Schlueter, and Jon Schlueter. They ask that
13 the court calculate the lodestar using the following rates: \$800 for Galipo, \$550 for both Peter and
14 Jon Schlueter, \$425 for Fattahi, \$350 for Quarry, and \$300 for Navab and Rau.³⁰ As support for
15 this request, counsel proffer declarations that recite their own, and their co-counsel’s, skills as
16 civil rights attorneys. They cite rates courts have awarded for their services in prior civil rights
17 cases. They also submit the declarations of several prominent civil rights attorneys practicing in
18 Los Angeles – John Burton, Paul Hoffman, Thomas E. Beck, and Danilo Becerra – who state that
19 Galipo’s and Quarry’s requested rates are reasonable.³¹

21 ³⁰See Motion, Exhs. 1 (Declaration of Dale K. Galipo in Support of Motion for Attorneys’
22 Fees (“Galipo Decl.”), ¶ 7), 2 (P. Schlueter Decl., ¶ 1), 3 (Declaration of Jon Schlueter in
23 Support of Motion for Attorneys’ Fees (“J. Schlueter Decl.”), ¶ 2), 4 (Declaration of Kaveh
24 Navab in Support of Motion for Attorneys’ Fees (“Navab Decl.”), ¶ 6), 5 (Declaration of John
25 C. Fattahi in Support of Motion for Attorneys’ Fees (“Fattahi Decl.”), ¶ 4), 6 (Declaration of
Adrienne Quarry in Support of Motion for Attorneys’ Fees (“Quarry Decl.”), ¶ 2), 7 (Declaration
of Hilary L. Rau in Support of Motion for Attorneys’ Fees (“Rau Decl.”), ¶ 4).

26 ³¹See Motion, Exhs. 8 (Declaration of John Burton in Support of Plaintiffs’ Motion for
27 Attorneys’ Fees (“Burton Decl.”)), 9 (Declaration of Paul L. Hoffman in Support of Plaintiffs’
28 Motion for Attorneys’ Fees (“Hoffman Decl.”)), 10 (Declaration of Thomas E. Beck in Support
of Plaintiffs’ Motion for Attorneys’ Fees (“Beck Decl.”)), 11 (Declaration of Danilo Becerra in

1 Jiles objects to each of the requested rates, arguing, *inter alia*, that his attorneys billed no
2 more than \$180 per hour for their work on the case; he notes that three of his attorneys are
3

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5 Support of Plaintiffs’ Motion for Attorneys’ Fees (“Becerra Decl.”)), 12 (Second Declaration of
6 Paul L. Hoffman in Support of Plaintiffs’ Motion for Attorneys’ Fees (“2nd Hoffman Decl.”)).
7 Counsel also rely on the results of a survey published in the Los Angeles Daily Journal. (Galipo
8 Decl., Exh. B (Chart in Los Angeles Daily Journal: Average Law Firm Billing Rates).) Jiles
9 objects to the court’s consideration of the survey as inadmissible hearsay. (Opposition at 13.)
10 “Surveys are admissible, if relevant, either as nonhearsay or through a hearsay exception.”
11 *Prudential Insurance Co. of America v. Gibraltar Financial Corp. of California*, 694 F.2d 1150,
12 1156 (9th Cir. 1982). Courts frequently find that survey evidence is admissible under the “catch-
13 all” exception to the hearsay rule. See FED.R.EVID. 807 (stating that hearsay not specifically
14 covered by another hearsay exception is not excluded where “(1) [it] has equivalent circumstantial
15 guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more
16 probative on the point for which it is offered than any other evidence that the proponent can obtain
17 through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the
18 interests of justice”); see also *Keith v. Volpe*, 618 F.Supp. 1132, 1161 (C.D. Cal. 1985)
19 (admitting survey evidence of number of households to be displaced by freeway construction and
20 the racial make-up of their occupants under Rule 803(24), the precursor to Rule 807). Plaintiffs
21 do not respond to Jiles’ objection; the court construes their silence as a concession that the survey
22 is inadmissible, and excludes the survey for that reason. Jiles has also proffered a survey
23 overview. This document does not focus on attorneys in Los Angeles or the Central District; it
24 also does not report rates by area of practice, with the exception that it isolates the highest- and
25 lowest-rate practice specialties (entertainment law and insurance defense, respectively). Jiles has
26 not shown that he could not adduce evidence that is more probative of the billing rates of
27 plaintiff’s civil rights attorneys in the Central District than the survey overview. Consequently,
28 the court concludes that it too is inadmissible. The court notes, moreover, that Jiles has
inaccurately represented the findings of the survey overview, in that he asserts that it concludes
billing rates went down from 2011 to 2012. (See Opposition at 13 n. 1 (“[A]s noted in the survey
attached to the Hassenberg declaration filed concurrently herewith, due to the economic decline,
law firm billing rates have *decreased* over the past few years”(emphasis original).) In fact, the
survey overview clearly states that “[t]he average equity partner billing rate *increased* by 3.4%
to \$514 in 2012 from \$497 in 2011. . . . Associate billing rates (average for all class years and
all firm sizes) *increased* 3% to \$337 from the 2011 rate of \$328.” (Opposition, Exh. 1
(Declaration of Barry Hassenberg in Opposition to Motion for Attorneys’ Fees (“Hassenberg
Decl.”), ¶ 3 (citing [www.rbz.com/wp-content/uploads/2012/11/2012LawFirmSurvey-
Roberts1.pdf](http://www.rbz.com/wp-content/uploads/2012/11/2012LawFirmSurvey-Roberts1.pdf))).) Instead, it appears from the document that those conducting the survey concluded
that overall attorney *compensation* went down because the number of hours billed fell. (See *id.*
(noting that while billing rates for partners increased by 3.4%, the average billable hours worked
decreased by 5.75%.) Therefore, even if the court were to consider Jiles’ evidence, it would not
support his position.

1 partners who have been practicing law in California since 1976, 1985, and 1991.³² It is reversible
2 error, however, for the court to “rel[y] on the rates paid by [a] City to private attorneys for
3 defending excessive force cases . . . [because such attorneys] are not in the same legal market as
4 private plaintiff’s attorneys who litigate civil rights cases. In addition, attorneys hired by a
5 government entity to defend excessive force cases are not acting as ‘private’ attorneys at all.”
6 *Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996). The court considers the balance of Jiles’
7 objections to counsels’ rates below.

8 **a. Dale Galipo**

9 Galipo is a 1984 graduate of UCLA Law School. As support for his requested hourly rate
10 of \$800, Galipo states that he has extensive experience successfully prosecuting civil rights actions
11 involving police misconduct resulting in serious injury or death. Galipo has tried more than 200
12 civil cases to verdict, winning the majority, and has recovered “numerous seven figure verdicts”
13 for his clients.³³ Hoffman, the former Legal Director of the ACLU of Southern California and
14 partner at the well-known civil rights law firm Schonbrun, DeSimone Seplow Harris & Hoffman,
15 LLP, says of Galipo:

16 “There is no other attorney in our community who has had the level of success in
17 police misconduct litigation in terms of large verdicts than Mr. Galipo has. From
18 my communications with other civil rights attorneys in the last few years it is clear
19 that Mr. Galipo is looked upon as the leading trial lawyer for the kinds of cases he
20 tries. There are few, if any, lawyers in Southern California with a better reputation
21 in this area or with greater skill or experience in this very demanding area of civil
22 rights practice. I think Mr. Galipo would be the first lawyer almost any other civil
23 rights lawyer would recommend to handle complicated deadly force police case.”³⁴

25 ³²Opposition at 2, Exh. 1 (Hassenberg Decl., ¶ 4).

26 ³³Galipo Decl., ¶ 9.

27 ³⁴Hoffman Decl., ¶¶ 4-5.

1 Hoffman states that \$800 per hour “is an hourly rate at the high end of rates for civil rights
2 lawyers but Mr. Galipo’s track record on civil rights trials has placed him in this select
3 company.”³⁵ Burton, another civil rights attorney, who has more than 34 years of experience and
4 specializes in police misconduct actions in Los Angeles states that, in his opinion, \$800 per hour
5 “is appropriate and necessary to attract attorneys of Mr. Galipo’s quality to challenging and risky
6 civil-rights cases.”³⁶ Burton reports that he “recently resolved a fee petition with the County of
7 Los Angeles based on a claimed rate of \$725 per hour.”³⁷ Beck, who was associate counsel in
8 Rodney King’s civil lawsuit and has prosecuted a number of other high-profile cases in the Los
9 Angeles area, agrees that \$800 per hour “is well within the range of reasonable market rates for
10 attorneys with [Galipo’s] skills, accomplishments, experience, and reputation,” and that is
11 “consistent with the rates that are currently being billed by equally talented and experienced
12 defense attorneys in metropolitan Los Angeles.”³⁸ Becerra, who has been practicing law for 39
13 years and who focuses on civil rights police misconduct cases, similarly agrees.³⁹

14 Courts in the Central District have awarded Galipo rates ranging from \$500 in 2006 to
15 \$800 in 2014. He was awarded \$800 per hour last month in *R.S. v. City of Long Beach*, SACV
16 11-536 AG (RNBx) (C.D. Cal. Jan. 31, 2014);⁴⁰ \$675 in March 2013 in *Contreras v. City of Los*

18 ³⁵*Id.*, ¶ 6.

19 ³⁶Burton Decl., ¶ 12.

20 ³⁷*Id.*, ¶ 10.

21 ³⁸Beck Decl., ¶ 4.

22 ³⁹Becerra Decl., ¶¶ 2, 4.

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24 ⁴⁰Jiles argues in his *ex parte* application that the court should not consider the court’s award
25 of \$800 per hour to Galipo in *R.S.* because Galipo did not submit the case in a timely fashion.
26 Specifically, he asserts that “there is simply no reason why th[is] [information] could not have
27 been included with Declarations filed concurrently with the moving papers.” *R.S.*, however, was
28 decided on January 31, 2014, the day Jiles filed opposition to plaintiffs’ motion for attorneys’ fees,
and more than two months after plaintiffs filed their motion. It was therefore impossible to submit
the evidence prior to that date. Filing notice of the case ten days after it was decided, on February
10, 2014, in support of plaintiffs’ reply, was reasonable. Other than arguing that Galipo’s citation

1 *Angeles*, No. 2:11-cv-1480-SVW-SH, 2013 WL 1296763 (C.D. Cal. Mar. 28, 2013); \$700 per
2 hour in September 2012 in *P.C. v. City of Los Angeles*, No. CV 07-6495 PLA (C.D. Cal. Sept.
3 14, 2012); \$500 per hour in August 2007 in *Ingram v. City of San Bernardino*, No. EDCV
4 05-925-VAP (SGLx), 2007 WL 5030225 (C.D. Cal. Aug. 27, 2007); and \$500 per hour in July
5 2006 in *Adams v. City of Rialto*, Nos. EDCV 04-155-VAP (SGLx), EDCV 04-1032 VAP, 2006
6 WL 7090890 (C.D. Cal. July 20, 2006).

7 Jiles contends that Galipo's requested rate is unreasonable, citing the fact that some courts
8 have awarded him fees at lower rates.⁴¹ Giles suggests that the court reduce Galipo's rate to \$525,
9 in line with a Northern District opinion awarding Galipo that amount in 2012.⁴² As noted,
10 however, it is the current prevailing rate for the district in which the case is litigated that
11 determines the reasonableness of an attorney's hourly rate. Jiles does not explain why more recent
12 Central District decisions finding significantly more than \$525 per hour reasonable for Galipo are
13 less accurate representations of the prevailing rate in this district than a 2012 Northern District
14 case. The more recent Central District cases indicate an upward trend over the years in the rates
15 courts have found reasonable for someone of Galipo's experience, at least in part because Galipo
16 has acquired more experience with the passage of time. Jiles also does not address the supporting
17 declarations plaintiffs have submitted. Given Jiles' failure to dispute the accuracy of the
18 statements in the declarations, and his failure to proffer declarations showing that a lower rate is
19 more reasonable, the court accepts plaintiffs' supporting declarations as persuasive evidence of
20 the prevailing rate in Los Angeles for prominent civil rights attorneys who specialize in police
21 misconduct cases. As noted, Hoffman believes a rate of \$800 per hour is at the high end of the

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23 of *R.S.* was untimely, Jiles offers no other reason why the court should not consider the decision;
24 he merely reiterates that Galipo's request for \$800 per hour is unreasonable. (Application, Exh.
25 B ([Proposed] Objection to the Reply Declaration of Dale K. Galipo) at 2-3.) Accordingly, the
26 court finds it appropriate to consider *R.S.* in determining a reasonable hourly rate for Galipo's
time.

27 ⁴¹Opposition at 12-14.

28 ⁴²*Id.* at 14.

1 range for such attorneys, while Burton states that he recently settled a fee petition with the County
2 of Los Angeles in which he claimed a rate of \$725 per hour. All of the attorneys who have
3 submitted declarations agree that, in Los Angeles, \$800 is reasonable for someone with Galipo's
4 experience prosecuting civil rights claims involving the use of deadly force.⁴³ On these facts,
5 given that the most recent rates Galipo has been awarded in this district range from \$625 to \$800,
6 and given its own evaluation of Galipo's experience and skill as a trial attorney and its knowledge
7 of the prevailing market rate for plaintiff's civil rights lawyers, the court concludes that a
8 reasonable rate for attorneys in Galipo's field with his experience is \$800 per hour.

9 **b. Adrienne Quarry**

10 Quarry is a 2005 graduate of Notre Dame Law School. She worked at Schonbrun
11 DeSimone from 2005 to 2010, and then began to work with Galipo. In a recent state court case,
12 *Jochimsen v. County of Los Angeles*, Los Angeles Superior Court Case No. BC386266, she was
13 awarded \$325 per hour for work performed in 2008 and 2009. Hoffman has submitted a second

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15 ⁴³At the hearing, Jiles' attorney argued that the court should not consider the declarations,
16 or give them particular weight, because they are self-serving. The Ninth Circuit, however, has
17 expressly approved the consideration of such declarations. In *Camacho*, the court noted that
18 "[a]ffidavits of the plaintiffs' attorney[s] and other attorneys regarding prevailing fees in the
19 community, and rate determinations in other cases . . . are satisfactory evidence of the prevailing
20 market rate." 523 F.3d at 980 (emphasis added). The court noted that the party opposing the fee
21 application "has a burden of rebuttal that requires submission of *evidence* to the district court
22 challenging the accuracy and reasonableness of the . . . facts asserted by the prevailing party in
23 its submitted affidavits." *Id.* (emphasis added). Jiles' argument that the declarations are self-
24 serving, without more, is insufficient to rebut plaintiffs' showing that Galipo's rates are
25 reasonable. This includes the declarations of plaintiffs' attorneys he has submitted. As Galipo
26 noted at the hearing, Jiles did not submit evidence, such as an expert report opining that the
27 reasonable market rate in the community for civil rights attorneys with Galipo's experience is
28 lower than \$800 an hour. While other plaintiffs' attorneys may submit declarations for self-
serving reasons, there is no evidence that this occurred here. The court notes, moreover, that the
declarations are submitted under penalty of perjury, a fact it presumes the declarants took into
account before agreeing to provide their sworn statements here. Based on its own knowledge of
the prevailing market rates in the Central District, the court does not believe that a fee of \$800 per
hour for someone of Galipo's experience is excessive, such that it would indicate collusion
between Galipo and the declarants supporting his request. Consequently, the court will consider
the declarations, which support its conclusion that \$800 per hour is a reasonable rate for Galipo
in this case.

1 declaration in support of Quarry’s fee request, in which he states that he has known Quarry since
2 she externed for him while still a law student in 2003, and that he had the opportunity to supervise
3 her work for more than four years at Schonbrune DeSimone.⁴⁴ He believes that \$350 per hour
4 “is below the market rate for attorneys of comparable skill and experience in civil rights cases in
5 this community.”⁴⁵

6 Jiles argues that Quarry’s requested rate is unreasonable because no court has ever valued
7 her services at \$350 per hour. He does not dispute Hoffman’s statements, however, including
8 his opinion that \$350 per hour is below the market rate for civil rights attorneys like Quarry who
9 have nine years of experience. Nor does he proffer evidence rebutting it. The court notes,
10 moreover, that the \$325 per hour that Quarry received in *Jochimsen* was for work performed
11 several years prior to her work on this case. Accordingly, the court concludes that Quarry’s
12 requested rate of \$350 per hour is reasonable.

13 c. **Peter Schlueter, Jon Schlueter, Kaveh Navab, John Fattahi, and**
14 **Hilary Rau**

15 Peter Schlueter is a 1991 honors graduate of Western State University College of Law.
16 After law school, he worked as a prosecutor for four years. Since 1999, he has focused on
17 criminal defense and civil rights litigation.⁴⁶ Prior to law school, Peter Schlueter was a journalist
18 and photojournalist. Jon Schlueter is a 1982 graduate of UCLA law school. After law school,
19 he became a prosecutor and tried more than 60 criminal cases to a jury before leaving to start his
20 own civil rights firm in 1999 with his brother, Peter Schlueter. Jon Schlueter has argued before
21 the California Supreme Court, the Ninth Circuit Court of Appeals, and the Fourth Appellate
22 District of the California Court of Appeal. As noted, both Peter and Jon Schlueter request that
23 the court value their time at \$550 per hour. In 2010, a court in the Central District awarded Peter
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26 ⁴⁴2nd Hoffman Decl., ¶¶ 4-5.

27 ⁴⁵*Id.*, ¶ 3.

28 ⁴⁶P. Schlueter Decl., ¶¶ 1-5.

1 Schlueter \$300 per hour and Jon Schlueter \$350 per hour for work performed between 2005 to
2 2007.⁴⁷ *McCown v. City of Fontana*, 711 F.Supp.2d 1067 (C.D. Cal. 2010).

3 Fattahi is a 2006 graduate of UCLA School of Law and former clerk to the Honorable
4 Virginia Phillips. Following his clerkship, Fatahi accepted a position at Quinn Emanuel Urquhart
5 & Sullivan, LLP, where he worked as an associate until 2009. At that point, he joined Galipo's
6 office, where he focused almost exclusively on plaintiffs' civil rights litigation. Fattahi left
7 Galipo's office in 2011 to start a solo practice, where he focuses exclusively on police civil rights
8 litigation. Fattahi requests that the court use an hourly rate of \$425 in awarding fees for his time.
9 In *Contreras*, he was awarded fees using a rate of \$350 per hour, see 2013 WL 1296763 at *3;
10 in *P.C.*, the court awarded him fees based on a rate of \$320 per hour.

11 Navab is a 2010 graduate of the Vermont Law School. During law school, he worked one
12 summer at the Law Offices of Carol A. Sobel. After law school, he joined Otten & Joyce, LLP,
13 which he left in 2012 to accept a position in Galipo's office. Rau is a 2010 graduate of UCLA
14 Law School. During law school, Rau was the editor of the UCLA Journal of Environmental Law
15 and Policy. She worked at Galipo's office until July 2012, when she left to accept a position at
16 The Feldman Law Firm, APC, where she has a plaintiffs' employment and civil rights practice.
17 Navab and Rau request that the court use an hourly rate of \$300 to value their time. In *Contreras*,
18 the court awarded Rau \$285 per hour. 2013 WL 1296763 at *3.

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22 ⁴⁷Jiles argues that the court should not consider the information that the *McCown* court
23 awarded the Schlueters hourly rates based on work performed between 2005 to 2007 because it
24 is irrelevant and should have been submitted in plaintiffs' moving papers. (Application, Exh. E
25 ([Proposed] Objection to the Reply Declaration of Peter Schlueter at 2-3.) As noted, because the
26 court has given Jiles an opportunity to respond to the information, the fact that it was not included
27 in Peter Schlueter's original declaration does not prevent the court from considering it. The fact
28 that the amount awarded in *McCown* was for work performed in 2005-2007 is clearly relevant
because it suggests that a reasonable rate for the two some years later would be higher because
they had more experience by the time they worked on this case. Accordingly, the court believes
it appropriate to consider the fact that the work for which the Schlueters received fees in *McCown*
was performed between 2005 to 2007.

1 Other than declarations by each of these attorneys concerning their experience and the
2 reasonableness of each other's rates, plaintiffs have adduced no other admissible⁴⁸ evidence
3 supporting the reasonableness of plaintiffs' fee request for these attorneys. They have therefore
4 failed to satisfy their burden of showing that the requested rates are reasonable. When a fee
5 applicant fails to establish the reasonableness of the requested rates, the court may exercise its
6 discretion to determine reasonable hourly rates based on its experience and knowledge of
7 prevailing rates in the community. See, e.g., *Plan Administrator v. Kienast*, No. 2:06-cv-1529,
8 2008 WL 1981637, *4 (W.D. Pa. May 2, 2008) ("If a party fails to meet its burden to
9 demonstrate a prima facie case that the requested rates were the prevailing rates in the community,
10 'the district court must exercise its discretion in fixing a reasonable hourly rate,'" quoting
11 *Washington v. Philadelphia Court of Common Pleas*, 89 F.3d 1031, 1036 (3d Cir. 1996)); *Moreno*
12 *v. Empire City Subway Co.*, No. CV 05-7768 (LMM) (HBP), 2008 WL 793605, *7 (S.D.N.Y.
13 Mar. 26, 2008) (where the fee applicant "has submitted no evidence of the prevailing market rate
14 for attorneys of like skill litigating cases similar to plaintiff's . . . it is within [the court's]
15 discretion to determine the reasonable hourly rate at which plaintiff[']s counsel should be
16 compensated based on [the court's] familiarity with plaintiff's case and the prevailing rates in the
17 [relevant community]"); *Shephard v. Dorsa*, No. CV 95-8748 ER (JGx), 1998 WL 1799018, *2
18 (C.D. Cal. July 2, 1998) (determining a reasonable hourly rate based on "(1) the Court's own
19 experience in considering the prevailing market rates in Los Angeles, (2) other fee awards in the
20 relevant market, and (3) ALTMAN WEIL, PENZA, SURVEY OF LAW FIRM ECONOMICS (1996)" in
21 a case where the fee applicant failed to establish the reasonableness of the lawyer's hourly rate).

22 Based on its experience and understanding of prevailing market rates in Los Angeles for
23 civil rights attorneys with experience comparable to the Schlueters, and its belief that the work the
24 Schlueters performed in this case did not require the skill of attorneys with as much experience

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27 ⁴⁸As noted, plaintiffs submitted a survey stating that the average associate billed \$516 per
28 hour in 2011, and \$550 per hour in 2012. The court has sustained Jiles' objection to the survey,
and will thus not consider it.

1 as they had,⁴⁹ the court concludes that \$450 per hour is a reasonable rate for their time. It
2 concludes that a reasonable rate for Fattahi is \$400 per hour, and that Navab's and Rau's
3 requested rate of \$300 per hour is reasonable as well.⁵⁰

4 **d. Conclusion Regarding Counsels' Requested Rates**

5 For the reasons, the court finds the following rates reasonable and will use them in
6 calculating fees in this case: Dale Galipo – \$800 per hour; Peter and Jon Schlueter – \$450 per
7 hour; John C. Fattahi – \$400; Adrienne Quarry – \$350; and Kaveh Navab and Hilary Rau –
8 \$300.

9 **2. Whether the Hours Billed Are Reasonable**

10 A court may award attorneys' fees only for the number of hours it concludes were
11 reasonably expended on the litigation. *Hensley*, 461 U.S. at 434 (“[Counsel] should make a good
12 faith effort to exclude . . . hours that are excessive, redundant, or otherwise unnecessary”).
13 “[T]he fee applicant bears the burden of documenting the appropriate hours expended in the
14 litigation and must submit evidence in support of th[e] hours worked. . . .” *Gates v.*
15 *Rowland*, 39 F.3d 1439, 1449 (9th Cir. 1994) (quoting *Gates v. Deukmejian*, 987 F.2d 1392,
16 1397-98 (9th Cir. 1992)); *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986)
17 (“[C]ounsel bears the burden of submitting detailed time records justifying the hours claimed to
18 have been expended”); *Pac. W. Cable Co. v. City of Sacramento*, 693 F.Supp. 865, 870 (E.D.
19 Cal. 1988) (“The cases do not indicate that every minute of an attorney's time must be
20 documented; they do, however, require that there be adequate description of how the time was
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22 ⁴⁹As discussed *infra*, the Schlueters were largely involved in the discovery aspects of the
23 case; they took many of the depositions and searched for possible witnesses and evidence plaintiffs
24 could introduce at trial. While these activities were important, they did not require attorneys with
25 the level of skill and experience the Schlueters have. For that reason, the court concludes that
\$550 is too high to constitute a reasonable rate for their work in this case.

26 ⁵⁰Jiles' counsel argued at the hearing that Navab and Rau have too little experience to make
27 a \$300 per hour reasonable. The court disagrees. Market rate is based not just on experience but
28 also on skill. In the court's experience, civil rights attorneys who are recent law graduates with
prestigious backgrounds frequently bill at rates in the \$300 per hour range.

1 spent, whether it be on research or some other aspect of the litigation. . .”). Although a fee
2 applicant “is not required to record in great detail how each minute of [his] time was expended
3 . . . [he must] list[] [the] hours and identify[] the general subject matter of [the] time
4 expenditures.” *Gucci Am., Inc. v. Pieta*, No. CV 04-9626 ABC (Mcx), 2006 WL 4725707, *2
5 (C.D. Cal. July 17, 2006) (quotation omitted).

6 In calculating the lodestar, courts typically exclude time spent on clerical or ministerial
7 tasks because such tasks are properly considered part of an attorney’s overhead and are reflected
8 in his or her hourly rate. See *Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989) (“[P]urely
9 clerical or secretarial tasks should not be billed at a paralegal [or lawyer’s] rate, regardless of who
10 performs them”). In determining whether the number of hours requested is reasonable, a court
11 must be mindful “that lawyers are not likely to spend unnecessary time on contingency fee cases
12 in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the
13 amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff’s
14 lawyer engages in churning. By and large, the court should defer to the winning lawyer’s
15 professional judgment as to how much time he was required to spend on the case; after all, he
16 won, and might not have, had he been more of a slacker.” *Moreno*, 534 F.3d at 1112.

17 In support of their motion for fees, each attorney has submitted time records detailing the
18 work they performed on the case. Collectively, plaintiffs’ counsel billed 1,500.65 hours working
19 on this matter, or about 7.8 hours per week over the four years the case was pending. The
20 attorney breakdown of hours is as follows: Galipo – 649.6 hours; Peter Schlueter – 470.65 hours;
21 Quarry – 270.8 hours; Jon Schlueter – 39.3 hours; and Fattahi – 16.2 hours.⁵¹ Jiles contends that
22 having seven attorneys work on the matter and bill this number of hours was unreasonable.⁵² He
23 asserts that the case did not involve a large number of filings, as there was a single motion to
24 dismiss, which plaintiffs did not oppose; a discovery motion; a “standard” number of motions *in*

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27 ⁵¹Motion at 18.

28 ⁵²Opposition at 10.

1 *limine*; and a motion for judgment as a matter of law.⁵³ Additionally, although the case was tried
2 twice, Jiles contends that the trials were not particularly difficult because they involved first two
3 and then a single cause of action.⁵⁴

4 Jiles also argues that many of the hours billed are excessive and duplicative. “The court
5 may reduce the number of hours awarded because the lawyer performed unnecessarily duplicative
6 work.” *Moreno*, 534 F.3d at 1112; see also *Campon v. City of Blue Springs, Missouri*, 289 F.3d
7 546, 553 (8th Cir. 2002) (reducing the number of hours and stating that, “[i]n our view, it should
8 not take four experienced, highly paid attorneys 480 hours to prepare one summary judgment
9 motion and to prepare for and conduct a four-day trial when all pretrial discovery had been
10 completed”). Jiles cites several aspects of plaintiffs’ billing in this regard. He notes that three
11 attorneys billed 41.9 hours for preparation of the attorneys’ fees motion, despite the fact that it
12 is “almost identical” to motions Galipo has filed in other cases. He asserts this is evidence of
13 duplicative billing.⁵⁵ Jiles also argues that Navab claims to have spent a total of 37.6 hours on the
14 fee motion in this case and a similar motion in *R.S.* during the same week: he asserts the hours
15 were either unnecessary, given the similarity of the motions, or that Navab double-billed for time
16 spent on each motion.⁵⁶ He also takes issue with Peter Schlueter’s time entries for 625 telephone
17 calls, primarily to Galipo and Quarry. He notes that most of the entries are for .1 hours – or 6
18 minutes – and Galipo and Quarry did not bill for the calls. From these facts, he deduces that the
19 calls were likely situations in which Schlueter called Galipo and left a voicemail. He contends

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25 ⁵³*Id.*

26 ⁵⁴*Id.*

27 ⁵⁵*Id.*

28 ⁵⁶*Id.* at 11.

1 this time should not be compensated.⁵⁷ Jiles asks generally that the court reduce Peter Schlueter's
2 hours by 50% because of these phone calls and his vague billing entries.⁵⁸

3 Next, Jiles focuses on hours billed for tasks related to trial. Galipo billed 134 hours on
4 trial preparation for the first trial and 225.5 hours in preparation for the second trial. Jiles argues
5 that this number of hours was unreasonable because there was only one claim at issue in the
6 second trial and that claim had already been tried.⁵⁹ He also asserts that Galipo billed for 40 hours
7 of preparation for the Rule 50(b) hearing, and that was unreasonable⁶⁰ Additionally, he notes that
8 Galipo billed 31.5 hours for time spent at trial, while Navab billed 18 hours and Peter Schlueter
9 billed 27.1 hours. Jiles contends that Navab's and Schlueter's time was unnecessary because only
10 Galipo tried the case.⁶¹

11 Finally, Jiles contends that plaintiffs' counsel block billed and that their time entries are too
12 vague to permit a thorough analysis of the reasonableness of the hours. For this reason, he
13 asserts, the number of hours should be reduced.⁶² The court considers these arguments *seriatim*
14 below.

15 **a. Whether Counsel Engaged in Block Billing**

16 The court has discretion to reduce the number of hours requested where attorneys' block
17 billing makes it difficult easily to identify the hours reasonably expended. See *Neil v.*
18 *Commissioner of Social Sec.*, 495 Fed. Appx. 845, 847 (9th Cir. Nov. 9, 2012) (Unpub. Disp.)
19 (holding that it was not an abuse of discretion for the district court to reduce a fee request by ten
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⁵⁷*Id.* at 17.

23 ⁵⁸*Id.* at 18.

24 ⁵⁹*Id.* at 16.

25 ⁶⁰*Id.* at 17.

26 ⁶¹*Id.*

27 ⁶²*Id.* at 15-16.
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1 percent to account for block billing, and citing *Hensley*, 461 U.S. at 437, and *Welch v. Metro Life*
2 *Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007)).

3 The court agrees with Jiles that Galipo block-billed hours he denoted “trial preparation.”
4 His time records indicate that “trial preparation includes[] review of Depositions, Reports,
5 Disclosures, Pretrial Documents, Expert Reports, Preparation of outline for opening, direct and
6 cross examination, and closing.”⁶³ Absent a breakdown of how much time Galipo spent reviewing
7 documents and how much time he spent preparing outlines of his opening statement, direct and
8 cross examination, and closing argument, however, the court is unable to say that it was
9 reasonable to spend 134 hours – or a little more than three forty-hour workweeks – preparing for
10 the first trial, and 225.5 hours – or approximately five-and-a-half forty-hour workweeks –
11 preparing for the second trial. For this reason, the court reduces Galipo’s trial hours by 20%
12 from 359.5 to 287.6 hours.

13 The court, however, does not agree with Jiles that Peter Schlueter, or any of the other
14 attorneys, engaged in block billing. Much of Peter Schlueter’s time is detailed in his time records.
15 For example, his entry on April 23, 2010 states “Discussion re progress of investigation with T
16 Thompson. Discussion of discovery needs and the finding of bullets. Discussion re posey.”⁶⁴
17 Although there are perhaps an equal number of entries that state only “Review” or “Gen[eral]
18 rev[iew] of file and progress,” Schlueter does not seek compensation for many of these entries.⁶⁵
19 Although Navab described the work he did for 18 hours only as “trial,” he submitted a declaration
20 stating that the time was spent preparing and coordinating witnesses and organizing documentary
21 evidence to be presented at trial.⁶⁶ This description is sufficiently detailed that the court can
22 determine whether the time spent was reasonable. Other counsel have likewise submitted time
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24 ⁶³Galipo Decl., Exh. A (Time Records) at 5.

25 ⁶⁴P. Schlueter Decl., Exh. A (Time Records).

26 ⁶⁵See e.g., *id.*, Exh. A (Time Records at 2/8/2011 and 2/15/2011).

27 ⁶⁶Reply, Exh. 3 (Reply Declaration of Kaveh Navab in Support of Motion for Attorneys’
28 Fees (“Navab Reply Decl.”), ¶ 4).

1 records that are adequate for purposes of determining whether the time spent was
2 reasonable. Accordingly, the court declines to reduce the balance of the hours on the basis that
3 time was block-billed.

4 **3. Whether Counsel’s Time Entries Show That They Performed Excessive,**
5 **Duplicative, and/or Unnecessary Work**

6 While the court agrees with Jiles that having seven attorneys work on this case
7 simultaneously would be excessive, it is clear from counsels’ time records that they were not all
8 working on the case at the same time. Where several counsel were working on the case at the
9 same time, moreover, they split their duties so that they did not perform overlapping work. This
10 manner of staffing reduces the likelihood that time entries are duplicative or reflect unnecessary
11 work. Galipo was lead trial counsel. Peter Schlueter acted as “the bridge between the clients”
12 and Galipo. Peter Schlueter was also primarily responsible for conducting an investigation; he
13 visited the shooting site, tracked down and questioned witnesses, and conducted depositions.⁶⁷
14 Jon Schlueter assisted his brother with investigation and depositions.⁶⁸ Quarry was the primary
15 associate assigned to the case in Galipo’s office from September 2010 to August 2012. She
16 coordinated discovery efforts and trial strategy with Peter Schlueter and Galipo, reviewed the
17 motion to dismiss and conducted much of plaintiffs’ written discovery.⁶⁹ Rau worked on the case
18 from April 2011 to July 2012, primarily drafting opposition to motions *in limine* and assisting
19 Galipo with trial preparation.⁷⁰ Navab took over responsibility for the day-to-day management
20 of the case beginning in November 2013.⁷¹ He was responsible for drafting the exhibit and
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23 ⁶⁷Reply, Exh. 4 (Reply Declaration of Peter Schlueter in Support of Motion for Attorneys’
24 Fees (“P. Schlueter Reply Decl.”), ¶¶ 6-7).

25 ⁶⁸J. Schlueter Decl., Exh. A (Time Records).

26 ⁶⁹Quarry Decl., Exh. B (Time Records).

27 ⁷⁰Rau Decl., Exh. A (Time Records).

28 ⁷¹Galipo Decl., ¶ 18.

1 witness lists, the verdict form, and the motion for attorneys' fees.⁷² He also assisted with trial,
2 preparing and coordinating witnesses and organizing documentary evidence for presentation at
3 trial.⁷³ Galipo brought Fattahi in to oppose Jiles' Rule 50 motion at the end of trial.⁷⁴

4 While having different associates handle different portions of the case likely increased the
5 amount of time the attorneys billed reviewing documents to familiarize themselves with the case,
6 there was little Galipo could do to prevent such duplication, given that several of his associates
7 joined and left his office during the course of this litigation. In all likelihood, having certain work
8 performed by associates billing at lower rates reduced total fees below what they would have been
9 had Galipo or one of the Schlueters undertaken to propound or response to written discovery, or
10 organize exhibits and coordinate with witnesses. The court does believe, however, that there was
11 some inefficiency created by the fact that Peter Schlueter served as a conduit for Galipo's
12 communications with plaintiffs. While the court understands the circumstances that led to this
13 layered approach to communication, that does not mean that defendant should be required to pay
14 higher fees as a result of it.

15 For example, the court believes that the number of calls Peter Schlueter made to Galipo's
16 office was excessive. Jiles contends that the court should infer from the length and number of the
17 calls, as well as from the fact that they are not mentioned in Galipo's billing records, that Peter
18 Schlueter billed for time he spent leaving voicemails for Galipo that took less than 6 minutes to
19 record.⁷⁵ Peter Schlueter counters that he can corroborate the calls with telephone bills, and that
20 the calls reflect conversations, not messages. He asserts they were necessary because counsel did
21 not work in the same office; he also asserts that counsel had to communicate and strategize more
22 frequently than might otherwise have been the case because evidence in defendant's possession
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24 ⁷²Navab Decl., Exh. A (Time Records).

25 ⁷³*Id.*; Reply, Exh. 3 (Navab Reply Decl., ¶ 4).

26 ⁷⁴Fattahi Decl., ¶ 5.

27 ⁷⁵Opposition at 17.

1 went missing and plaintiffs had to track down most of the evidence they ultimately offered at
2 trial.⁷⁶ The court simply cannot find that as many as seven telephone calls a day was reasonable
3 even if the case required an abnormal amount of independent investigation. Peter Schlueter billed
4 for 581 calls to Galipo's office between November 24, 2010 and June 26, 2013.⁷⁷ 510 of these
5 calls lasted just six minutes. The court finds this amount of communication, which amounts to
6 71.9 hours, excessive, given that many, if not most, of these telephone calls were likely
7 necessitated by the layered approach counsel took to communication with the clients. It therefore
8 reduces the hours billed by Peter Schlueter for telephone calls to co-counsel by 80% to 14.38
9 hours.

10 As noted, Jiles next contends that the number of hours Galipo spent preparing for trial was
11 excessive. The court has already reduced Galipo's trial preparation hours by 20%, to 287.6
12 hours, because he block-billed his time. Consequently, the court must examine whether it was
13 reasonable for Galipo to spend 107 hours preparing for the first trial and 180.4 hours preparing
14 for the second trial. The court concludes it was reasonable to spend 107 hours preparing for use
15 of deadly force case. The evidence in the case was conflicting; eyewitnesses saw different things
16 and it was undoubtedly necessary to compare the various versions of events witnesses recounted,
17 look for patterns and inconsistencies, try to construct a coherent theory of what transpired, and
18 determine how best to elicit testimony in a way that would be most helpful in proving that theory.
19 The questions the jury resolved were fact-intensive – whether Don Richard's hand was in his
20 pocket at the time Jiles shot him, whether Don Richard was facing Jiles or had turned away from
21 him at the time Jiles fired the third and fourth shots, and the amount of pain and suffering Don
22 Richard suffered before he died as a result of the gunshot wounds.⁷⁸ For these reasons, the court
23 finds that 107 hours was a reasonable amount of time to expend preparing for trial, and declines
24 to reduce it.

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26 ⁷⁶P. Schlueter Reply Decl., ¶ 6.

27 ⁷⁷Schlueter Decl., Exh. A (Time Records).

28 ⁷⁸See JMOL Order at 3, 16.

1 As respects preparation for the second trial, Galipo states that he spent more time preparing
2 for the second trial because he had to change his theory of the case in order to prevail. The court
3 observed that during the second trial, Galipo focused less on whether Don Richard's hand was in
4 his pocket before, during and after he was shot, and more on the fact that Jiles shot Don Richard
5 four times, including twice when the jury found that Don Richard had turned away from him.
6 Coupled with the fact that Galipo had to review all of the documents and evidence in the case as
7 well as transcripts of the first trial, this added to the amount of time reasonably expended
8 preparing for the second trial.⁷⁹ The Ninth Circuit has noted that "[w]hen a case goes on for many
9 years, a lot of legal work product will grow stale. . . . A lawyer [] needs to get up to speed with
10 the research previously performed. All this is duplication, of course, but it's *necessary*
11 duplication; it is inherent in the process of litigating over time." *Moreno*, 534 F.3d at 1112
12 (emphasis original). As with legal research, attorneys litigating a case over the course of several
13 years must refresh their recollection of the facts. It was reasonable for Galipo to spend additional
14 hours reviewing the evidence and transcripts of the first trial in preparation for the second trial,
15 and to spend additional time reformulating his theory of the case. For these reasons, the court
16 does not agree with Jiles that Galipo's trial preparation hours should be reduced further.

17 Next, as respects the 27.1 hours Peter Schlueter recorded for attending the first trial and
18 the 18 hours Navab recorded for attending the second trial, the court disagrees with Jiles that it
19 was unreasonable for plaintiffs to be represented by two attorneys at trial. The record establishes
20 that Peter Schlueter was intimately familiar with the evidence, the witnesses, and the clients.
21 Counsel state that Peter Schlueter "spent time with the family during the first trial, and aided in
22 the coordination of witnesses in both trials," although he did not bill for his presence at the second
23 trial.⁸⁰ Navab helped Galipo prepare and coordinate witnesses, and organized documentary
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27 ⁷⁹Reply at 9.

28 ⁸⁰*Id.* at 10.

1 evidence to be presented at the second trial.⁸¹ This was substantive work and the hours Navab
2 billed are reasonable. See *Fleming v. Kemper National Services, Inc.*, 373 F.Supp.2d 1000, 1009
3 (N.D. Cal. 2005) (“[G]iven the importance of the [settlement] conference, it was necessary for
4 a senior attorney to attend, and it was also important that the more junior attorney who actually
5 drafted the settlement conference statement be available at the conference to answer questions
6 about the facts of the case and the supporting evidence. Although the senior attorney could have
7 drafted the statement himself, it would not have been cost-effective, as his billing rate is more than
8 twice as high as that of the more junior attorney who actually drafted the statement”). Indeed,
9 Jiles himself was represented by two attorneys throughout both trials. As for Peter Schlueter, it
10 was reasonable for him to attend the first trial to the extent he performed substantive work that
11 contributed to presentation of the case to the jury. As the court has noted earlier, while it
12 understands the circumstances that resulted in Peter Schlueter having primary contact with the
13 plaintiffs, it does not believe that this circumstance, which resulted in two attorneys doing work
14 that could have been done by one, necessitates that defendant pay both attorneys’ full fee.
15 Comparing Peter Schlueter’s time for the first trial with Navab’s time for the second trial, and
16 recognizing that Schlueter assisted with the coordination of witnesses in addition to serving as
17 liaison to plaintiffs, the court reduces the number of hours he is entitled to recover for the first
18 trial by 9.1 hours, for a total of 18 hours.

19 Finally, the court believes that the 41.9 hours spent drafting the motion for attorneys’ fees
20 was reasonable. Although Jiles contends the motion is almost identical to those Galipo has filed
21 in other cases, Jiles has not submitted the other motions for the court’s review. Even if Galipo
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24 ⁸¹Navab Supp. Decl., ¶ 4. Jiles argues that the court should not consider this information
25 because it is “irrelevant, hyperbolic, and otherwise unsupported with evidence.” (Application,
26 Exh. D ([Proposed] Objection to the Reply Declaration of Kaveh Navab at 2).) The information
27 is clearly relevant because it assists the court in determining whether 18 hours was a reasonable
28 number of hours to bill by describing the tasks Navab performed during those hours. Navab’s
statement, moreover, is not hyperbolic, and there is no need for Navab to submit evidence in
addition to a declaration under penalty of perjury. The court accordingly deems it appropriate to
consider this information.

1 uses standard language in the motions to describe the principles governing awards of attorneys’
 2 fees, and even if the biographical information concerning the attorneys who worked on the file and
 3 the fees they have been awarded in other cases is in large measure duplicative across motions,
 4 drafting this motion necessitated coordination with eleven attorneys and the crafting of case-
 5 specific arguments. There is no evidence, moreover, that Navab billed excessively for his work
 6 on the motion or double-billed for drafting the same portions of this motion as another he worked
 7 on during the same week. This is pure speculation on Jiles’ part.

8 The court has reviewed the detailed time records submitted by counsel in support of the
 9 motion for attorneys’ fees in this case. The factual issues were difficult and, although the parties
 10 litigated only one motion to dismiss, there were 15 motions *in limine* and one *ex parte* application
 11 to exclude expert testimony, as well as several follow-up offers of proof and sur-replies allowed
 12 by the court at the hearing on the motions, twenty-four depositions, a wealth of evidence that
 13 plaintiffs apparently discovered only through lengthy independent investigation, and two trials.
 14 Under these circumstances, the court finds the balance of counsels’ requested hours reasonable.

15 **a. Calculation of the Lodestar Figure**

16 For the reasons stated, the court calculates counsels’ reasonable lodestar at:

Attorney	Rate	Hours	Total
Dale Galipo	\$800.00	580.7	\$464,560.00
Peter Schlueter	\$450.00	404.03	\$181,813.50
Jon Schlueter	\$450.00	58.1	\$26,145.00
John Fattahi	\$400.00	16.2	\$9,480.00
Adrienne Quarry	\$350.00	270.8	\$94,780.00
Kaveh Navab	\$300.00	62.2	\$18,660.00
Hilary Rau	\$300.00	39.3	\$11,790.00
Total:		1,451.15	\$807,228.50⁸²

25
 26 ⁸²This number includes requested additional fees for preparation of the motion for
 27 attorneys’ fees, reply, and attendance at the hearing, which the court calculated by multiplying the
 28 number of hours counsel reasonably spent on these tasks by the hourly rates the court has
 approved, *supra*. See *Clark*, 803 F.2d at 992 (“We, like every other court that has considered

1 **4. Whether the Court Should Adjust the Award**

2 “A ‘strong presumption’ exists that the lodestar figure represents a ‘reasonable fee,’ and
3 therefore, it should only be enhanced or reduced in ‘rare and exceptional cases.’” *Fischer v.*
4 *SJB-P.D. Inc.*, 214 F.3d 1115, 1119 n. 4 (9th Cir. 2000) (quoting *Pennsylvania v. Delaware*
5 *Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986)); accord *Clark*, 803 F.2d at 990-
6 91; see also *Hiram C.*, 2004 WL 4999156 at *1 (“There is a strong presumption that the lodestar
7 amount is reasonable,” citing *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994)).
8 Nevertheless, after calculating the “lodestar” amount, the court must determine whether it should
9 be adjusted, considering the factors identified in *Kerr v. Screen Guild Extra, Inc.*, 526 F.2d 67,
10 70 (9th Cir. 1975): (1) the time and labor required for the litigation; (2) the novelty and difficulty
11 of the questions presented; (3) the skill required to perform the legal services properly; (4) the
12 preclusion of other employment by the attorney due to acceptance of the case; (5) the customary
13 fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the
14 circumstances; (8) the amount involved and the result obtained; (9) the experience, reputation, and
15 ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the
16 professional relationship with the client; and (12) awards in similar cases. See *Hiram C.*, 2004
17 WL 4999156 at *1; see also *Jason D.W.*, 158 F.3d at 209.

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19
20 the question, have held that the time spent in establishing entitlement to an amount of fees
21 awardable under section 1988 is compensable). Galipo estimates he will spent three hours
22 preparing for and attending the hearing on the motion (Galipo Supp. Decl., ¶ 10). Fattahi has
23 billed an additional 7.5 hours drafting a reply to Jiles’ opposition (Fatahi Supp. Decl., ¶ 5), and
24 Navab spent an additional 8.1 hours on the reply as well (Navab Supp. Decl., ¶ 6). The court
25 incorporated these hours into the lodestar, which had the effect of increasing the fee award by
26 \$7,830. Jiles objects to the court’s consideration of these hours in his *ex parte* application.
27 Beyond asserting that the information was not included in the plaintiffs’ moving papers, however,
28 he simply repeats his objection that counsels’ fees are unreasonable and inadequately supported.
(See Application, Exhs. B ([Proposed] Objection to the Reply Declaration of Dale K. Galipo at 3-4); C ([Proposed] Objection to the Reply Declaration of John C. Fattahi at 2-4); D ([Proposed] Objection to the Reply Declaration of Kaveh Navab at 3-4). The court has considered Jiles’ objections, but finds the hours reported reasonable and adequately supported by declarations under penalty of perjury.

1 Many of these factors, however, are subsumed in the initial lodestar calculation, see
2 *Hensley*, 461 U.S. at 434 n. 9, and should not be double-counted, see, e.g., *Fisher*, 214 F.3d at
3 1119; *Clark*, 803 F.2d at 990-91. Moreover, some factors deserve more weight than others. The
4 Supreme Court has held that “the most critical factor” in determining the reasonableness of a fee
5 award “is the degree of success obtained.” *Farrar*, 506 U.S. at 114 (quoting *Hensley*, 461 U.S.
6 at 436); see also *Texas State Teachers Ass’n v. Garland Independent School Dist.*, 489 U.S. 782,
7 790 (1989) (noting that “the degree of [the party’s] success in relation to the other goals of the
8 lawsuit is a factor critical to the determination of the size of a reasonable fee”). This factor is
9 particularly important when the parties seeking fees is deemed to have “prevailed” on only some
10 of their claims. See *Hensley*, 461 U.S. at 434. Stated differently, a reduced fee is appropriate
11 if the relief, “however significant, is limited in comparison to the scope of the litigation as a
12 whole.” *Id.* at 440.

13 Consistent with this precedent, the Ninth Circuit has recently observed that “*Hensley’s* test
14 does not require apportionment ‘mechanically’ on the basis of success or failure on *enumerated*
15 *issues.*” *Crawford v. San Dieguito Union Sch. Dist.*, 202 Fed. Appx. 185, 186 (9th Cir. Sept.
16 15, 2006) (Unpub. Disp.) (emphasis added); see also *Hensley*, 461 U.S. at 435 n. 11 (“We agree
17 with the District Court’s rejection of a mathematical approach comparing the total number of
18 issues in the case with those actually prevailed upon. Such a ratio provides little aid in
19 determining what is a reasonable fee in light of all the relevant factors” (internal quotation marks
20 and record citation omitted)); *Aguirre v. Los Angeles Unified Sch. Dist.*, 461 F.3d 1114, 1121,
21 1122 (9th Cir. 2006) (Pregerson, J., concurring) (“[T]he district court is not required to calculate
22 a fee award by looking solely to the number of successful claims. That is, nothing in *Hensley*
23 suggests that Aguirre is entitled to only 14.8% or 4/27 of the fee requested because she prevailed
24 on only four of twenty seven claims. This is true because some claims may seek dramatic or more
25 substantial relief, while others seek minor relief; the fee award must be calculated with careful
26 consideration of the degree of success the prevailing party obtained”); *Robinson v. City of*
27 *Edmond*, 160 F.3d 1275, 1283 (10th Cir. 1998) (“[W]hen a plaintiff achieves the principal goal
28

1 of [his] lawsuit, lack of success on some of [his] interrelated claims may not be used as a basis for
2 reducing the plaintiff's fee award").

3 Rather, courts must consider two issues in evaluating a party's degree of success. *Webb*
4 *v. Sloan*, 330 F.3d 1158, 1169 (9th Cir. 2003). The first step is to determine whether the
5 prevailing party lost on claims that were unrelated to the claims on which it succeeded, since fees
6 should not be awarded for hours spent on claims that were entirely distinct, unrelated, and
7 unsuccessful. *Id.* Plaintiffs did not lose on unrelated claims. Although the first jury found they
8 had not proven that Jiles interfered with their due process right to a familial relationship with their
9 father, this claim was inextricably intertwined with plaintiffs' claim that Jiles used excessive force
10 resulting in their father's death. Plaintiffs' state law claims, which the court dismissed without
11 analysis after plaintiffs filed a notice of non-opposition to defendants' motion to dismiss, were also
12 inextricably intertwined with the excessive force claim. Finally, plaintiffs did not lose the balance
13 of their federal claims or their claims against other defendants, as they voluntarily dismissed these
14 claims during the course of litigation. Neither the court nor the jury had an opportunity to pass
15 on the merits of those claims, and the court notes that plaintiffs dismiss claims or defendants for
16 a host of strategic reasons, and not simply because they have concluded the claims are not viable.
17 Even if plaintiffs had lost on these aspects of their case, moreover, the remaining §§ 1983 and
18 1985 claims arose from Jiles' shooting of Don Richard and were inextricably intertwined with the
19 excessive force claim as well.

20 Next, the court must consider whether the prevailing party "achieve[d] a level of success
21 that makes the hours reasonably expended a satisfactory basis for making a fee award." *Id.* As
22 the Supreme Court has held, "[w]here a plaintiff has obtained excellent results, his attorney should
23 recover a fully compensatory fee," which "encompass[es] all hours reasonably expended on the
24 litigation." *Hensley*, 461 U.S. at 435. "The amount of damages a plaintiff recovers is certainly
25 relevant to the amount of attorney's fees to be awarded under § 1988. It is, however, only one
26 of many factors that a court should consider in calculating an award of attorney's fees. [The
27 Supreme Court has] reject[ed] the proposition that fee awards under § 1988 should necessarily be
28 proportionate to the amount of damages a civil rights plaintiff actually recovers." *City of*

1 *Riverside v. Rivera*, 477 U.S. 561, 574 (1986). As the Ninth Circuit has noted, “*Rivera* tells us
2 that there is no absolute requirement that attorneys’ fees in civil rights cases be proportionate to
3 the damages awarded. Although the damage amount may be relevant, the correct standard is one
4 of compensation for time reasonably expended.” *Thorne v. City of El Segundo*, 802 F.2d 1131,
5 1143-44 (9th Cir. 1986).

6 Jiles argues that plaintiffs’ requested fee of \$953,750.60 is disproportionate to the \$200,000
7 verdict in their favor.⁸³ The court, of course, has calculated a lower lodestar of \$807,228.50,
8 making the differential between the verdict and the fee amount smaller.⁸⁴ The \$200,000 recovery,
9 moreover, is not insignificant. The jury found that \$200,000 was sufficient to compensate
10 plaintiffs, as Don Richard’s successors in interest, for his actual damages. The court believes this
11 was an excellent result, most particularly because the damages were limited to Don Richard’s pain
12 and suffering prior to death. Although the jury did not award punitive damages, this is because
13 it could not reach a unanimous conclusion as to whether Jiles’ conduct was malicious, oppressive,
14 or in reckless disregard for Don Richard’s rights.

15 As noted, moreover, plaintiffs’ measure of success is not based solely on the amount of
16 their recovery. The jury’s verdict validates plaintiffs’ belief that Jiles’ conduct was
17 unconstitutional, provides Don Richard’s family a measure of closure they would not otherwise
18 have received, and provides guidance to Jiles and the San Bernardino Police Department about the
19 limits of appropriate uses of deadly force, which benefits society at large. Finally, as the court
20 has noted, the eyewitness accounts of what transpired were conflicting; the reaction of the first
21 jury, which hung on the excessive force count, necessitated reconsideration of plaintiffs’ theory
22 of the case, and reassessment of the evidence in light of the change in theory. Under the
23 circumstances, the court believes \$200,000 was an excellent recovery. For all of these reasons,
24 the court cannot accept Jiles’ argument that fees should be reduced to \$289,409.80 because they

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26 ⁸³Opposition at 8.

27 ⁸⁴At the hearing, Jiles’ lawyer reiterated his argument that the differential between fees of
28 \$800,000 or more and plaintiffs’ recovery was too large.

1 are disproportionate to plaintiffs' recovery.⁸⁵ See, e.g., *Rivera*, 477 U.S. at 576 (affirming a
2 \$245,000 fee award in a case where plaintiff recovered \$33,000); *Jones v. County of Sacramento*,
3 No. CIV S-09-1025 DAD, 2011 WL 3584332, *17 (E.D. Cal. Aug. 12, 2011) (awarding
4 \$273,622.50 in attorneys' fees in a § 1983 excessive force claim where plaintiffs recovered
5 \$31,000 in compensatory and no punitive damages, declining to reduce award on the basis that
6 the fees were disproportionate to the recovery, and stating "[t]he court is entirely unpersuaded by
7 defendants proposed proportionality ratio [that because plaintiff recovered only 2% of what he
8 asked the jury to award, he should be entitled to only 2% of the requested lodestar], which is
9 blatantly inconsistent with Congress' purpose in enacting § 1988"); *Wheeler v. Coss*, No.
10 3:06-cv-00717-RAM, 2010 WL 2628667, *9 (D. Nev. June 28, 2010) (awarding fees of
11 \$264,158.86 in a § 1983 unlawful arrest action where plaintiff obtained a \$50,000 settlement,
12 stating that the recovery represented an "excellent result[]," and noting that the case "conferred
13 a meaningful public benefit" because it "sen[t] a message to the City of Reno and its police
14 department about the need to undertake proper investigation before placing a person under
15 arrest"); *Oberfelder v. City of Petaluma*, No. C-98-1470 MHP, 2002 WL 472308, *4 (N.D. Cal.
16 Jan.29, 2002) (awarding \$940,593 in fees where plaintiff recovered \$100,000 at trial, declining
17 to reduce award as disproportionate, and noting that "plaintiff received excellent results from
18 counsel's work"). The court therefore awards counsel reasonable attorneys' fees of \$807,228.50.

19 **E. Whether the Court Should Award Counsel their Requested Costs**

20 Plaintiffs also request \$21,429.60 in costs.⁸⁶ Rule 54(d)(1) provides that costs "should be
21 allowed to the prevailing party." FED.R.CIV.PROC. 54(d)(1). Plaintiffs have submitted a detailed
22 breakdown of their request for \$14,104.60 in costs, together with photocopies of receipts and
23 checks that support their application to the clerk to tax costs.⁸⁷ Although plaintiffs apparently seek
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25 ⁸⁵*Id.* at 18. Although Jiles suggests this alternate amount, he does not explain how he
26 arrived at this valuation.

27 ⁸⁶Motion at 20.

28 ⁸⁷Application to Clerk to Tax Costs, Docket No. 256 (Nov. 13, 2013).

1 to have the court award the amounts included in their taxable costs, their request for taxable costs
2 will be heard by the Clerk’s designee in accordance with Local Rule 54-2.2, not by the court in
3 this motion. Accordingly, to the extent plaintiffs ask that the court award taxable costs of
4 \$14,104.60, the court denies the motion.

5 The remainder of the costs plaintiffs seek – \$7,325.00 – non-taxable expert witness fees.
6 Specifically, plaintiffs seek \$6,500 that was paid to Roger Clark, their police practices expert, and
7 \$825 that was paid to Vina Spiehler, a forensic toxicologist.⁸⁸ Plaintiffs have not submitted
8 declarations by counsel or other supporting evidence demonstrating that they expended these
9 amounts, and the court declines to provide them time to do so because the expert witness fees are
10 not recoverable.

11 “It is well established that attorney’s fees under 42 U.S.C. § 1988 include reasonable out-
12 of-pocket litigation expenses that would normally be charged to a fee paying client, even if the
13 court cannot tax these expenses as ‘costs’ under 28 U.S.C. § 1920.” *Trustees of Construction*
14 *Industry and Laborers Health and Welfare Trust v. Redland Insurance Co.*, 460 F.3d 1253, 1257
15 (9th Cir. 2006). Expert witness fees, however, are not recoverable as costs under § 1988. In
16 *West Virginia University Hospital Inc. v. Casey*, 499 U.S. 83, 102 (1991), the Supreme Court
17 concluded that 42 U.S.C. § 1988 does not authorize the shifting of expert fees in civil rights cases
18 to the losing party. As a result, prevailing parties cannot recover more than the witness fees
19 authorized by § 1920 for experts who testified; they can recover nothing for the services of experts
20 in a non-testimonial capacity. *Gates*, 987 F.2d at 1407 (“ In *Casey* the Court held that § 1988
21 does not convey authority to shift expert fees in civil rights litigation to the losing party and that
22 when experts appear at trial they are eligible for the fee provided by 28 U.S.C. §§ 1920 and 1821,
23 but that the prevailing party may not be awarded more than this amount for expert witnesses’ trial
24 testimony and is not entitled to anything for services rendered by experts in a nontestimonial
25 capacity”).

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28 ⁸⁸Motion at 20.

1 After the Supreme Court’s decision in *Casey*, Congress amended § 1988 to provide for the
2 recovery of expert fees in cases brought to enforce a provision of 42 U.S.C. § 1981 or 1981a.
3 See 42 U.S.C. § 1988(c) (“In awarding an attorney’s fee under subsection (b) of this section in
4 any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court,
5 in its discretion, may include expert fees as part of the attorney’s fee”); *Landgraf v. USI Film*
6 *Products*, 511 U.S. 244, 251 (1994) (noting, in the context of a § 1981 case, that Congress
7 amended § 1988 to “respond[] to [*Casey*], by providing that an award of attorney’s fees may
8 include expert fees”). Congress did not amend § 1988 to allow courts to award expert fees in all
9 cases covered by § 1988(b), however. The amendment was limited only to cases arising under
10 §§ 1981 or 1981a. In other types of cases, *Casey* is binding, and precludes awarding plaintiffs
11 the expert fees they seek. See *Jones*, 2011 WL 3584332 at *19 (“[A] plaintiff may not recover
12 expert witness fees pursuant to § 1988”); *Mitchell Engineering v. City and County of San*
13 *Francisco*, No. C 08–04022 SI, 2011 WL 1431511, *8 (N.D. Cal. Apr. 14, 2011) (“The City
14 points out, and . . . counsel concede, that plaintiff may not recover expert fees pursuant to Section
15 1988”); *Ruff v. County of Kings*, 700 F.Supp.2d 1225, 1243 (E.D. Cal. 2010) (noting that the
16 Supreme Court has held that § 1988 does not allow for the recovery of expert witness fees and that
17 subsequent Congressional action did not change this for purposes of § 1983 litigation); *Agster v.*
18 *Maricopa County*, 486 F.Supp.2d 1005, 1019 (D. Ariz. 2007) (because Congress did not amend
19 § 1988 to permit reimbursement of expert fees in § 1983 cases, the *Casey* decision controls in such
20 cases). As it appears that the entirety of the non-taxable costs plaintiffs seek to have the court
21 award are expert witness fees, the court denies plaintiffs’ request to award costs.

22 23 III. CONCLUSION

24 For the reasons stated, the court awards counsel reasonable attorneys’ fees in the amount
25 of \$807,228.50. It denies counsels’ request for costs. Counsels’ request for taxable costs will
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1 be heard by the Clerk's designee. The court declines to award expert witness fees as non-taxable
2 costs.

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4 DATED: March 10, 2014


FOR PUBLIC RELEASE
MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE

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PRIORITY SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. EDCV 12-00700 VAP (OPx)

Date: August 27, 2014

Title: WILLIAM F. HOWARD -v- COUNTY OF RIVERSIDE ET AL

=====

PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFFS:

ATTORNEYS PRESENT FOR
DEFENDANTS:

None

None

PROCEEDINGS: MINUTE ORDER GRANTING IN PART DEFENDANT'S
MOTION TO STAY JUDGMENT PENDING APPEAL AND
GRANTING MOTION FOR ATTORNEY'S FEES (IN
CHAMBERS)

On July 3, 2014, following a jury trial, the Court entered a Judgment in favor of Plaintiff William Howard and against Defendants Deputy Armando Munoz and the County of Riverside. Before the Court is Defendants' Motion to Stay Enforcement of Judgment Pending Appeal (Doc. No. 174) and Plaintiff's Motion for Attorney's Fees and Costs (Doc. No. 169). These matters came before the Court for a hearing on August 25, 2014. After considering the papers filed in support of, and in opposition to, the Motions, and the arguments advanced by counsel at the hearings, the Court GRANTS the Motion for Attorney's Fees and GRANTS IN PART the Motion to Stay Judgment Pending Appeal without Bond.

MINUTES FORM 11
CIVIL -- GEN

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Page 1

EDCV 12-00700 VAP (OPx)
WILLIAM F. HOWARD v. COUNTY OF RIVERSIDE ET AL
MINUTE ORDER of August 27, 2014

I. BACKGROUND

On April 7, 2011, William H. Howard ("Plaintiff") was shot in the face by County of Riverside Sheriff Deputy Armando Munoz. Plaintiff brought an action against Deputy Munoz and the County of Riverside, alleging that Deputy Munoz used excessive and unreasonable force in violation of federal and state law and seeking damages for pain, suffering, and past and future medical costs. The issues of liability and damages were tried to a jury on June 3, 2014. On June 11, 2014, the jury returned a special verdict in favor of Plaintiff on his federal and state law claims and awarded him a total of \$7,810,000.00 in damages. ("Verdict") (Doc. No. 154.) Plaintiff elected the damages awarded to him on his federal claim, and a judgment in the sum of \$6,410,000.00 was entered in his favor on July 3, 2014. ("Judgment") (Doc. No. 168.) Defendants have appealed the Judgment to the Ninth Circuit Court of Appeals. (Notice of Appeal) (Doc. No. 176.)

On July 17, 2014, Plaintiff filed a Motion for Attorney's Fees and Costs pursuant to 42 U.S.C. section 1988. ("Atty's Fees Mot.") (Doc. No. 169.) On July 28, 2014, Defendants filed an Opposition ("Atty's Fees Opp'n") (Doc. No. 181) and evidence in support of their Opposition (Doc. No. 180). On August 11, 2014, Plaintiff filed his Reply and the Supplemental Declarations of Carol Sobel ("Supp. Sobel Decl.") (Doc. No. 188); Vicki Sarmiento ("Supp. Sarmiento Decl.") (Doc. No. 189); and Dale Galipo (Supp. Galipo Decl.") (Doc. No. 190).

On July 24, 2014, Defendants filed a Motion to Stay the Enforcement of Judgment Pending Appeal ("Stay Motion") (Doc. No. 174). Plaintiff filed an Opposition on August 4, 2014 ("Stay Opp'n") (Doc. No. 183), and Defendants filed their Reply on August 7, 2014 ("Stay Reply") (Doc. No. 186).

II. LEGAL STANDARD

A. Staying Enforcement of Judgment Pending Appeal

Pursuant to Federal Rule of Civil Procedure 62(d), "[i]f an appeal is taken, the appellant may obtain a stay by supersedeas bond. . . ." Fed. R. Civ. P. 62(d). The bond "may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond." Id. Filing the bond results in a stay as a matter of right. Id. A supersedeas bond "suspends a judgment creditor's power to levy execution, [usually] pending appeal,"

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Black's Law Dictionary 1479 (8th ed. 2004), while also ensuring the judgment creditor will be able to collect the judgment plus interest should the court of appeals affirm the judgment, Rachel v. Banana Republic, Inc., 831 F.2d 1503, 1505 n.1 (9th Cir. 1987). "District courts have inherent discretionary authority in setting supersedeas bonds. . . . The purpose of a supersedeas bond is to secure the appellees from a loss resulting from the stay of execution and a full supersedeas bond should therefore be required." Rachel, 831 F.2d at 1505 n.1 (citing Miami Int'l Realty Co. v. Paynter, 807 F.2d 871, 873 (10th Cir. 1986)).

B. Attorney's Fees Under 42 U.S.C. § 1988

Fees in section 1983 cases are governed by 42 U.S.C. section 1988, which provides:

In any action or proceeding to enforce a provision of section[] . . . 1983 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs

42 U.S.C. § 1988(b). "The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances." Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (quotation marks omitted). The analysis of attorney's fees is twofold. The Court first must determine whether or not the party seeking fees is the prevailing party. Fischer v. SJB-P.D., Inc., 214 F.3d 1115 (9th Cir. 2000); Chabner v. United of Omaha Life Ins. Co., 1999 WL 33227443 (N.D. Cal. 1999). A plaintiff is the prevailing party when the "resolution of the dispute . . . changes the legal relationship between itself and the defendant." Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989). In other words, "plaintiffs may be considered "prevailing parties" for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Farrar v. Hobby, 506 U.S. 103, 109 (1992) (quoting Hensley, 461 U.S. at 433).

III. DISCUSSION

A. Stay Enforcement of Judgment Pending Appeal

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Defendants seek to stay enforcement of the Judgment pending appeal without posting a supersedeas bond. Plaintiff opposes Defendants' Motion to stay the judgment without a bond, and contends that the bond should be set at 125 percent of the damages award, or \$8,012,500.00.

1. Waiver of Bond

While filing a supersedeas bond allows a party to obtain a stay as a matter of right, "[t]he court also has discretion to stay execution of judgment pending appeal without requiring a bond," where the court finds that the appellee's interests are adequately protected. Acacia Research Corp. v. Nat'l Union Fire Ins. Co., 2008 WL 4381649, at *2 (C.D. Cal. Sept. 9, 2008) (citing Am. Color Graphics, Inc. v. Travelers Prop. Cas. Ins. Co., 2007 WL 1520952, at *1 (N.D. Cal. May 23, 2007)); see Townsend v. Holman Consulting Corp., 881 F.2d 788, 796 (9th Cir. 1989) ("[T]he district court has broad discretionary power to waive the bond requirement if it sees fit."), vacated on reh'g on other grounds, 929 F.2d 1358 (9th Cir. 1990) (en banc); Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n, 636 F.2d 755, 759-61 (D.C. Cir. 1980) (Rule 62 "in no way necessarily implies that filing a bond is the only way to obtain a stay").

The court may waive the bond requirement on several grounds: "(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial position that the requirement to post a bond would place other creditors of the defendant in an insecure position." United States v. Boyce, 148 F. Supp. 2d 1069, 1096 (S.D. Cal. 2001) (citing Dillon v. City of Chicago, 866 F.2d 902, 904-05 (7th Cir. 1988) (internal citations and quotations omitted)).

Defendants argue that, although the Judgment was entered jointly and severally against Deputy Munoz and the County of Riverside, the County of Riverside is responsible for the entire amount of the Judgment pursuant to California Government Code section 825. Cal. Gov't Code § 825. The County argues that it has sufficient assets to pay the Judgment if it is affirmed on appeal, and requiring a

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bond would be a waste of money.

The County bears the burden of "objectively demonstrat[ing]" the reasons for departing from the usual requirement of a full superseadeas bond. Cotton ex rel. McClure v. City of Eureka, Cal., 860 F. Supp. 2d 999, 1028 (N.D. Cal. 2012). In support of its assertion that the County has sufficient resources to satisfy the Judgment, the County submits the declaration of the County of Riverside's Chief Executive Officer, Jay Orr. Orr states that County is not in any danger of filing for bankruptcy and the annual budget for 2014-2015 fiscal year is \$4.8 billion dollars. (Orr Decl. ¶¶ 1-2.) In addition, Jeff Ashworth, the County's Senior Liability Claims Adjustor, submitted a declaration detailing the payment process if the Judgment is affirmed. (Ashworth Decl. ¶ 6.) Ashworth states that if the Judgment is affirmed, he will submit a check request to the Auditor/Controller's office for payment of the amount of the Judgment, and then the Auditor/Controller will issue a check and return it to him. Plaintiff will then be required to provide a signed W-9 statement to comply with IRS regulations. (Id. ¶ 6.) In total, Ashworth estimates the process usually takes less than 30 days. (Id.)

As Plaintiff correctly asserts, the County has provided information about the County's assets without explaining its liabilities.¹ The County has not identified which section of the budget the Judgment will be paid from, or provided any assurance that the amount necessary to pay the judgment is available or kept as part of a specific fund. Ashworth states that the process of satisfying the judgment is accomplished by simply requesting a check from the auditor/comptroller, but neither Orr nor Ashworth give any information about which fund within the budget will pay the judgment, or how much money is available in that specific fund.

"Courts are generally reluctant to waive the bond requirement for

¹For example, the "Riverside County Budget Summary" attached to the Defendants' Reply states, in reference to the 2013-2014 fiscal year that, "of the \$4.7 billion total, the Board of Supervisors has direct control over revenue totaling \$590 million. The remainder of the budget is encumbered by state spending mandates and other commitments, such as bond payments." (Ex. 3 to Opp'n at 3.)

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governmental entities unless funds are readily available and an effective procedure is in place for paying the judgment." Wilmer v. Bd. of Cnty. Comm'rs of Leavenworth Cnty., Kan., 844 F. Supp. 1414, 1419 (D. Kan. 1993). Courts have waived the bond requirement for governmental entities when the entity has specifically allocated and identified funds that will be available to pay a judgment. See Lightfoot v. Walker, 797 F.2d 505, 507 (7th Cir. 1986) (noting the Rule 62(e), which entitles the federal government to stay execution pending appeal without bond, is appropriate because all judgments against the United States are paid out of a specific "Judgments Fund"); Contract Design Grp., Inc. v. Wayne State Univ., 2014 WL 2892513, at *2 (E.D. Mich. June 25, 2014) (no bond required when University received funding from the state of Michigan legislature and identified \$183.5 million in unrestricted net assets that could satisfy the judgment of \$550,000); Johnson v. City of Memphis, 2013 WL 2404042, at *1 (W.D. Tenn. May 31, 2013) (no bond necessary because City of Memphis maintains a "General Fund for, *inter alia*, the purpose of satisfying money judgments"); McCaughey v. City of Blue Ash, 2009 WL 4280266, at *1-2 (S.D. Ohio Nov. 25, 2009) (no bond necessary where city represented it had already set aside funds to pay \$526,430.42 judgment). Courts have not permitted waiver when funds are not reserved specifically for the payment of the judgment. See Order Re: Motion for Stay of Execution of Judgment and Waive of Posting Supersedeas Bond, Contreras v. City of Los Angeles, Case No. 2:11-cv-1480-SVW-SH (May 20, 2013, C.D. Cal.) ("Contreras") (City of Los Angeles not entitled to bond waiver when it merely identified the amount available in reserve fund without reporting deficits or providing assurance the sufficient funds were set aside for the judgment).

Furthermore, the amount of the judgment in this case, \$6,410,000.00, is much larger than the judgments in cases where courts have found that simply identifying the government entity's resources was a sufficient guarantee the judgment would be paid. Fialka-Feldman v. Oakland Univ. Bd. of Trs., 2010 U.S. Dist. LEXIS 92581 (E.D. Mich. Sept. 7, 2010) (Oakland University received funding from state and had sufficient resources to pay \$101,676.00 judgment); Reese v. Mich. Dep't of Corr., 2011 U.S. Dist. LEXIS 21545 (E.D. Mich. Mar. 3, 2011) (state of Michigan's ability to pay \$50,000.00 judgment "beyond dispute.").

In Reply, the County submits the Declaration of James Sessions, the County

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of Riverside's Risk Manager, who states that the majority of the judgment will be covered through "CSAC-Excess Insurance Authority," which is an insurance pool and group purchase program that currently insures most of the counties, cities, schools, and districts in the State of California. (Sessions Decl. ¶ 3.) The County is self-insured for the first million dollars of defense costs and the payment of any judgment against it. Sessions states that CSAC purchased excess insurance for this action from Ironshore Insurance Company, which will be responsible for the amount of judgment in excess of one million dollars. (Sessions Decl. ¶ 4.) As Vice-President of the CSAC Executive Committee, Sessions states that he can attest that CSAC is financial stable. (Sessions Decl. ¶ 3.) In addition, Sessions submits A.M. Best's A:14 rating of Ironshore. (Sessions Decl. ¶ 4.)

In Cotton, the City of Eureka submitted declarations from representatives of its insurance company stating that there were no coverage issues in regard to the Judgment and thus the insurance would provide sufficient funds to pay the judgment. The United States District Court for the Northern District of California found these declarations were not sufficient proof of the City's ability to pay any judgment because the insurance representatives did not state their respective funds would "unconditionally satisfy the judgment." 860 F. Supp. 2d at 1028.

Here, the Risk Manager for the County of Riverside stated that Ironshore will cover the costs of any judgment. The County has not provided any declarations from Ironshore, or any other evidence, such as the policy limits, that supports Sessions' assertion that there is insurance coverage and that coverage would "unconditionally satisfy the judgment." See Cotton, 860 F. Supp. 2d at 1028; Cf. Barachkov v. Davis, 2013 WL 2149104, at *9 (E.D. Mich. May 16, 2013) (Affidavit from insurance company admitting liability and promising to pay judgment on appeal sufficient to waive bond).² The County has not met its burden of demonstrating that

²At the hearing the County indicated it was willing to provide a declaration from Ironshore regarding its liability and willingness to pay the amount the amount of the
(continued...)

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waiver of the supersedeas bond requirement is appropriate.

2. Amount of the Bond

Plaintiff seeks a bond in the sum of 125 percent of the trial judgment, which amounts to \$8,012,500.00. Plaintiff seeks this amount in order to account for interest on the judgment and attorney's fees and costs. Defendants argue that, if a bond is required, it should be calculated based on an interest rate of .11 percent per year for two years, which is the average amount of time the Ninth Circuit takes to resolve an appeal. Under Defendant's calculation the bond would be set at \$6,424,102.00.

The purpose of a supersedeas bond is to secure the appellees from a loss resulting from the stay of execution. Rachel, 831 F.2d at 1505 n.1. Rule 62(d) is silent as to the amount appropriate for a supersedeas bond pending appeal and the Court has discretionary authority to set the amount of the bond. "Although practices vary among judges, a bond of 1.25 to 1.5 times the judgment is typically required." Cotton, 860 F. Supp. 2d at 1029 (quoting Christopher A. Goelz & Meredith J. Watts, California Practice Guide: Ninth Circuit Civil Appellate Practice ¶ 1:168 (2011)).

Defendant has cited no case law in support of its calculation of the amount of the supersedeas bond. Plaintiff has cited to one recent civil rights cases in the

²(...continued)

judgment in excess of \$1,000,000.00 if it is affirmed on appeal. First, the Court notes that the issue of insurance was improperly raised for the first time on Reply. Second, the Court it is not required to consider new evidence submitted after the hearing, especially when that evidence could have been obtained at the time the motion was filed. It is clear under existing case law, including the cases cited by the Defendants in their Motion, that the declarations submitted in support of their Motion were insufficient to justify waiver of a supersedeas bond. Defendants initial failure to include the appropriate declarations in support of their Motion is not a reason to afford Defendants a second opportunity to submit sufficient evidence.

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Central District of California where the court set the supersedeas bond at 125 percent of the amount of the total judgment. See Contreras at 7. In Contreras, the City of Los Angeles was required to post bond of \$8,283,612.88, which was 125 percent of the \$6,626,890.30 judgment, in order to stay execution of the judgment. Id. Similarly, in Cotton, the court ordered the City of Eureka to post a bond of \$5,718,750.00, which was 125 percent of the judgment entered in a civil rights action. Accordingly, the Court finds that a bond in the amount of 125 percent of the judgment, which is \$8,012,500.00, is appropriate.

B. Attorney's Fees Under 42 U.S.C. § 1988

Plaintiff was the prevailing party at trial. The jury found that Deputy Munoz used excessive and unreasonable force against Plaintiff and awarded Plaintiff \$7,810,000.00 in damages. After electing damages for his federal excessive force claim, a Judgment was entered in Plaintiff's favor for \$6,410,000.00. Defendants agree Plaintiff is entitled to reasonable attorney's fees, but objects to the costs, hourly rate, and number of hours requested.

"In determining a reasonable attorney's fee, the district court's first step is to calculate a 'lodestar' by multiplying the number of hours it finds the prevailing party expended on the litigation by a reasonable hourly rate." McGrath v. County of Nevada, 67 F.3d 248, 252 (9th Cir. 1995) (citing Hensley, 461 U.S. at 433). The Court then decides whether to increase or decrease the lodestar amount by evaluating the factors enunciated in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976). The Kerr factors are: time and labor required; the novelty and difficulty of the questions involved; the skill needed to perform the legal service properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee, whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the "undesirability" of the case; the nature and length of the professional relationship with the client; and awards in similar cases. Id.

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Plaintiff's counsel Vicki Sarmiento seeks \$320,040.00 in fees based on an hourly rate of \$600 per hour and a total of 533.4 hours; Dale Galipo seeks \$419,120.00 in fees based on an hourly rate of \$800 per hour and a total of 523.9 hours. Defendants object that (1) the hourly rates requested are too high; (2) fees should not be awarded for duplicative work, generic "trial preparation", or hours that did not contribute to the verdict; and (3) the hours claimed are excessive.

1. Reasonable Hourly Rate

"The hourly rate for successful civil rights attorneys is to be calculated by considering certain factors, including the novelty and difficulty of the issues, the skill required to try the case, whether or not the fee is contingent, the experience held by counsel and fee awards in similar cases." Moreno v. City of Sacramento, 534 F.3d 1106, 1114 (9th Cir. 2008). In addition, the court is guided by "the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." Trevino v. Gates, 99 F.3d 911, 925 (9th Cir. 1996).

In support of their requested hourly rates, Ms. Sarmiento and Mr. Galipo submit declarations detailing their skills as civil rights attorneys and past fee awards they have received.³ They also submit numerous declarations from accomplished civil rights attorneys in the Los Angeles area - Paul Hoffman, John Burton, Jorge Gonzalez, and Carol Sobel - who attest that the rates requested by Sarmiento and Galipo are reasonable.⁴

In Opposition, Defendants argue that the hourly rates requested are too high.

³Declaration of Plaintiff's attorney Vicki I. Sarmiento ("Sarmiento Decl.") (Doc. No. 170) and Declaration of Plaintiff's attorney Dale Galipo ("Galipo Decl.") (Doc. No. 171).

⁴Declarations of Carol Sobel ("Sobel Decl.") (Doc. No. 170-2); Jorge Gonzalez ("Gonzalez Decl.") (Doc. No. 170-3); Paul Hoffman ("Hoffman Decl.") (Doc. No. 171-1); and John Burton ("Burton Decl.") (Doc. No. 171-2).

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In support of their Opposition they submit the declarations of several attorneys who practice in the Inland Empire, including the attorneys hired to defend the County in this action. All of these attorneys bill at hourly rates that are lower than the rates requested by Plaintiff and range from \$165.00 per hour to \$400.00 per hour.⁵ As Plaintiff correctly points out in Reply, except for Andrew Roth, all of the declarations were submitted by attorneys who do not practice in the area of civil rights litigation. The Roth Declaration submitted is a copy of a Declaration submitted in support of Roth's 2011 motion for attorney's fees in an employment action, in which he requested an hourly rate of \$400.00 per hour. (Roth Decl. ¶ 5.) Thus, although the Court has considered the rates charged by Mr. Roth, the Court notes that the declaration submitted does not relate to fees charged for work in a civil rights action.

In regard to the rates charged by defense counsel, the Ninth Circuit has stated that "private attorneys hired by a government entity to defend excessive force cases are not in the same legal market as private plaintiff's attorneys who litigate civil rights cases." Trevino, 99 F.3d at 925. Accordingly, the Court may not consider the compensation of the defense attorneys in this case when determining the reasonable hourly rates for Plaintiff's counsel.

Mr. Galipo is an extremely accomplished and successful civil rights attorney. He has managed his own law firm since 1991, and has tried in excess of two hundred civil cases through verdict. (Galipo Decl. ¶¶ 8, 9.) Mr. Galipo specializes in police misconduct civil rights litigation and been counsel on numerous civil rights cases that resulted in multi-million dollar plaintiff's verdicts. (Id. ¶ 10.) In support of Mr. Galipo's fee request, Paul Hoffman, a partner at Schonbrun DeSimone Seplow Harris & Hoffman LLP, states that "there is no other attorney in our community who has had the level of success in police misconduct litigation in terms of large verdicts that Mr. Galipo has." (Hoffman Decl. ¶ 4.) In 2006 and 2007 this Court awarded Mr. Galipo an hourly rate of \$500.00 per hour for his work on two different civil rights

⁵Declarations of Andrew Roth ("Roth Decl."); Dennis Stout ("Stout Decl."); Mark Gunn ("Gunn Decl."); Jeffrey Raynes ("Raynes Decl."); and Jeremy Hanson ("Hanson Decl.")(Doc. No. 180).

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cases.⁶ Since 2007 the hourly rates awarded to Mr. Galipo by courts in the Central District have ranged from \$675.00 to \$800.00.⁷ Notably, Mr. Galipo was awarded an hourly rate of \$800.00 per hour in two recent civil rights cases in the Central District. See R.S. v. City of Long Beach, SACV11-536 AG (RNBx) (C.D. Cal. Jan. 31, 2014); Sanchez et al v. County of San Bernardino, CV10-9384 MMM (OPx) (C.D. Cal. March 10, 2014). Considering the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation, the Court finds a reasonable hourly rate for Mr. Galipo is \$800.00 per hour.

Ms. Sarmiento is also an accomplished civil rights attorney. She has been in private practice since 1991 and specializes in major personal injury and civil rights police misconduct cases. (Sarmiento Decl. ¶ 5.) Several local civil rights attorneys submitted declarations attesting to Ms. Sarmiento's skill and experience. Ms. Sarmiento was recently awarded an hourly rate of \$500.00 per hour in a civil rights case in Los Angeles Superior Court. (Id. ¶ 8.) Considering the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation, the Court finds a reasonable hourly rate for Ms. Sarmiento is \$550 per hour.

2. Reasonable Hours

The Court has reviewed each and every billing entry in Plaintiff's fee request. The Court has reduced the fees requested by Plaintiff for tasks (1) on which excessive time was spent, (2) unnecessary, excessive, or duplicative entries, (3)

⁶Ingram v. City of San Bernardino, No. EDCV 05-925-VAP (SGLx), 2007 WL 5030225 (C.D. Cal. Aug. 27, 2007) (hourly rate of \$500 for Galipo); Adams v. City of Rialto, Nos. EDCV 04-155-VAP (SGLx), EDCV 04-1032 VAP, 2006 WL 7090890 (C.D. Cal. July 20, 2006) (same).

⁷Contreras v. City of Angeles, No. 2:11-cv-1480-SVW-SH, 2013 WL 1296763 (C.D. Cal. Mar. 28, 2013) (\$675 per hour); P.C. v. City of Los Angeles, No. CV 07-6495 PLA (C.D. Cal. Sept. 14, 2012) (\$700 per hour).

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time charged for clerical or secretarial tasks. The Court notes that Plaintiff's counsel voluntarily eliminated time spent on administrative or semi-clerical tasks, inter-office communication, some communication between co-counsel, and miscellaneous discovery matters, and thus the Court's reductions are minimal. (Atty's Fee Mot. at 12.) In addition, Plaintiff does not seek fees for any paralegal assistance and does not seek a multiplier, and has withdrawn his request for witness costs on Reply.

Defendants argue that Plaintiff should not receive compensation for hours related to claims on behalf of Plaintiff's father and son that were dismissed and claims against Sergeant Wedertz that were dismissed shortly before trial. The Court agrees that the hours related to the potential claims by Plaintiff's father and son are not sufficiently related to the ultimate litigation in which Plaintiff prevailed to justify an award of fees, and has reduced the hours requested accordingly. The time spent related to the claims against Sergeant Wedertz, including the motion for summary judgment, were in furtherance of the litigation in which Plaintiff prevailed and contributed to Plaintiff's success at trial. Accordingly, a reduction of those hours is not warranted.

Defendants also argue that counsels' hours should be reduced to account for round numbers, and that it is "impossible that all tasks just happened to take whole hours or half hours to complete." (Atty's Fees Opp'n at 12.) The Court has reviewed the billing records of Plaintiff's counsel and notes there are numerous records that are not in whole or half-hour increments. It appears that Plaintiff's counsel do indeed bill in tenth of hour increments, and therefore a reduction on this basis is not justified.

Defendants further argue that there is "huge duplication" in the billing records, including entries for both Ms. Sarmiento and Mr. Galipo to analyze all the reports, statements, and trial documents. (Atty's Fees Opp'n at 13.) In their supplemental declarations, Plaintiff's counsel explain that Ms. Sarmiento took the lead in drafting all the pleadings, motions, and pretrial documents, propounding and responding to written discovery, and consulting with experts. (Sarmiento Supp. Decl. ¶ 2.) Mr.

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Galipo was lead trial counsel, but reviewed pretrial documents and motions in order to offer his input and familiarize himself with the case. (Galipo Supp. Decl. ¶ 5; Sarmiento Supp. Decl. ¶ 2.) Aside from Deputy Munoz, Ms. Sarmiento voluntarily eliminated hours she spent attending depositions taken by Mr. Galipo. (Sarmiento Supp. Decl. ¶ 3.) Accordingly, any duplication of efforts in this regard were reasonable and necessary and a reduction of hours on this basis is not justified.

Finally, Defendants object to Mr. Galipo's entries for generic "trial preparation," which add up to a total of 241.5 hours, or almost half of the total hours he listed for this case. Mr. Galipo's billing sheet describes "trial preparation" as including:

Outlining examination for all witnesses while reviewing reports, statements, photos, medical records, expert reports, officer's depositions, expert report and deposition testimony, preparing Voir Dire, Opening Statement, Closing Argument, Direct Examination, Cross Examination, and Rebuttal Arguments. Trial Preparation also includes reviewing Pre-Trial Documents, Exhibits, Jury Instructions, Witness Lists, Motions in Limine, and Verdict Form, etc.

(Ex. A to Galipo Decl. at 5.) Mr. Galipo's billing records do not specifically describe the particular tasks within his definition of "trial preparation" that are associated with each individual billing entry.

Plaintiff's counsel bears the burden of establishing entitlement to an attorney's fee award and "documenting the appropriate hours expended and hourly rates." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The Court maintains discretion to reduce the number of hours requested where an attorney's block billing makes it difficult to identify whether the hours were reasonably expended. See Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th Cir. 2007) ("We do not quarrel with the district court's authority to reduce hours that are billed in block format. The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked."); R.S., et al,

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SACV11-536 AG (RNBx) at 28 (reducing Galipo's "trial preparation" hours by 20 percent based on block billing).

The trial court, due to its familiarity with the case, is in the best position to evaluate the reasonableness of the hours requested. Moreno, 534 F.3d 1106, 1116 (9th Cir. 2008). The time Mr. Galipo spent preparing for trial was reflected in the organized manner of counsel's trial presentation and his familiarity with the facts and complex legal issues of the case. In addition, the Court notes that throughout the trial Defendants were represented by three senior attorneys, who also had the assistance of a paralegal. Meanwhile Mr. Galipo and Ms. Sarmiento handled Plaintiff's case entirely on their own. Accordingly, the time spent on trial preparation was not excessive. In light of the lack of specificity in Mr. Galipo's billing for "trial preparation", the Court reduces the hours he spent dedicated to "trial preparation" by 5 percent, or 12.08 hours.

In addition, Plaintiff is entitled to attorney's fees for the time spent establishing his right to attorney's fees. Clark v. City of Los Angeles, 803 F.2d 987, 992 (9th Cir. 1986). Ms. Sarmiento submitted billing records documenting the time spent preparing this Motion and requests an award for an additional 18.5 hours. This is a reasonable amount of time to spend in relation to the Attorney's Fees Motion, and the Court has added these hours to its calculation.

In conclusion, the "presumptively reasonable" lodestar amounts for Plaintiff's counsel are as follows. See Jordan, 815 F.2d at 1262. The Court sees no reason to depart from the lodestar amount.

Attorney	Hourly Rate	Hours	Lodestar
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Galipo	\$800.00	498.4 ⁸	\$398,720.00
Sarmiento	\$550.00	499.4 ⁹	\$274,670.00
Total		997.82	\$673,390.00

Plaintiff is also entitled to his reasonable out of pocket expenses of \$12,796.14.¹⁰ The total award of attorney's fees and costs is \$686,186.14.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART Defendants' Motion to Stay the Judgment Pending Appeal, and orders Defendant County of Riverside post a bond of \$8,012,500.00. The Court GRANTS Plaintiff's Motion for Attorney's Fees and Costs, and awards fees in the amount of \$673,390.00 and costs in the amount of \$12,796.14.

IT IS SO ORDERED.

⁸521.9 - 12.08 (5% block billing reduction) - 11.4 (father/son claim) = 498.4.

⁹525.4 - 44.4 (father/son claim) + 18.5 (attorney's fee motion) = 499.5.

¹⁰As noted earlier, Plaintiff withdrew his request for expert witness fees of \$45,670.18 in his Reply.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARK WILLITS, JUDY GRIFFIN,
BRENT PILGREEN, and
COMMUNITIES ACTIVELY LIVING
INDEPENDENT & FREE (“CALIF”),
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a public
entity,

Defendant.

Case No.: CV 10-5782 CBM (RZx)

**ORDER GRANTING MOTION FOR
ATTORNEYS’ FEES AND COSTS**

The matter before the Court is Plaintiffs’ unopposed Motion For Attorneys’ Fees and Costs brought pursuant to Fed. Rule of Civ. Proc. 23(h) (the “Motion”). (Dkt. No. 380.)

I. PROCEDURAL AND FACTUAL OVERVIEW

On August 4, 2010, Plaintiffs Mark Willits, Judy Griffin, Brent Pilgreen, and Communities Actively Living Independent and Free (“CALIF”) (collectively, “Named Plaintiffs”) filed a class action lawsuit on behalf of persons with mobility disabilities against the City of Los Angeles (the “City”) and various individual defendants based on the alleged inaccessibility of the City’s sidewalks and other

1 “pedestrian rights of way.” The Complaint asserted two federal claims under the
2 American with Disabilities Act (the “ADA”) and Section 504 of the Rehabilitation
3 Act of 1973 (“Rehabilitation Act” or “Section 504”), and four state law claims.

4 **A. State Court Actions**

5 In December 2006, Saundra Carter and nine other individuals filed a class
6 action complaint in state court against the City alleging disability discrimination in
7 connection with the City’s sidewalks. (Los Angeles Superior Court Case No.
8 BC363305.) In December 2007, Nicole Fahmie commenced a class action
9 against the City in state court based on, among other things, lack of ramps or
10 cutouts on the City’s curbs. (Los Angeles Superior Court Case No. BC381773.)
11 *Carter* and *Fahmie* (collectively, “*Carter/Fahmie*”) were consolidated on January
12 27, 2011 under Case No. BC363305.¹

13 Victor Pineda, Anatoli Ilyashov, and CALIF commenced a state court class
14 action against the City and various individual defendants in December 2008 on
15 behalf of persons with mobility disabilities who have been denied access to
16 pedestrian rights of way in the City. (Los Angeles Superior Court Case No.
17 BC403327, hereinafter “*Pineda*”.)

18 **B. Procedural History**

19 On December 10, 2010, the Court denied defendants’ motion to stay
20 proceedings pending *Pineda*, but dismissed the state law claims without prejudice
21 “to be pursued in state court.”² (Dkt. No. 57.) The Named Plaintiffs commenced
22 a state court action against the City following this Court’s dismissal of their state
23

24 _____
25 ¹ A settlement was reached in 2011 in *Carter/Fahmie*. Although the Named
26 Plaintiffs objected to the *Carter/Fahmie* class action settlement, the settlement
27 was approved by the Superior Court in 2012. The Named Plaintiffs appealed the
28 Superior Court’s approval of the *Carter/Fahmie* settlement, and the California
Court of Appeal reversed the Superior Court order certifying the settlement class
and approving the settlement based on due process grounds. *Carter v. City of Los
Angeles*, 224 Cal. App. 4th 808 (Cal. Ct. App. 2014).

² The Court also dismissed the individual defendants on that date. (Dkt. No. 57.)

1 law claims. (Case No. BC457403, hereinafter “*Griffin*”).³

2 The Court granted Plaintiffs’ motion for class certification for injunctive
3 and declaratory relief only on January 3, 2011, and appointed Schneider Wallace
4 Cottrell Konecky Wotkyns LLP (“SWCKW”), Disability Rights Legal Center
5 (“DRLC”), Goldstein, Borgen, Dardarian & Ho (“GBDH”), and the Legal Aid
6 Society – Employment Law Center (“LAS-ELC”) as Class Counsel. (Dkt. Nos.
7 59, 177.)

8 Defendants filed a motion for judgment on the pleadings based on the
9 purported res judicata effect of the State Court Actions, which was denied as
10 premature by this Court on August 10, 2012. (Dkt. No. 150.)

11 The Court granted preliminary and final approval of the parties’ class action
12 settlement agreement in this case (the “Settlement Agreement”).

13 Plaintiffs’ instant Motion seeks \$13,300,000 in attorneys’ fees and
14 \$1,700,000 in costs expended in connection with this litigation and the State Court
15 Actions.⁴

16 II. STATEMENT OF THE LAW

17 Federal Rule of Civil Procedure Rule 23(h) provides that “[i]n a certified
18 class action, the court may award attorney’s fees and nontaxable costs that are
19 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

20 In “civil rights and other injunctive relief class actions, courts often use a
21 lodestar calculation because there is no way to gauge the net value of the
22 settlement or any percentage thereof.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
23 1029 (9th Cir. 1998). In determining the amount of a reasonable fee, the Court
24 first determines “the number of hours reasonably expended on the litigation
25 multiplied by a reasonable hourly rate.” *Jankey*, 537 F.3d at 1132 (citing *Hensley*

26 ³ *Carter/Fahmie, Pineda, and Griffin* shall be collectively referred to herein as the
27 “State Court Actions.”

28 ⁴ Currently pending before the Clerk is Plaintiffs’ application to tax costs. (Dkt.
No. 377.)

1 v. *Eckerhart*, 461 U.S. 424, 433-34 (1983)). “The hours expended and the rate
2 should be supported by adequate documentation and other evidence.” *Hanlon*,
3 150 F.3d at 1029. The Court then “exclude[s] from th[e] initial fee calculation
4 hours that were not reasonably expended,” such as hours that are “excessive,
5 redundant, or otherwise unnecessary.” *Jankey*, 537 F.3d at 1132 (citing *Hensley v.*
6 *Eckerhart*, 461 U.S. 424, 433-34 (1983)). The Court, however, must provide a
7 “comprehensible” explanation for any fee reductions. *T.B. ex rel. Brenneise v.*
8 *San Diego Unified Sch. Dist.*, 806 F.3d 451, 486 (9th Cir. 2015), *cert. denied sub*
9 *nom. San Diego Unified Sch. Dist. v. T.B.*, 136 S. Ct. 1679 (2016).

10 III. DISCUSSION

11 A. Prevailing Party

12 The Court finds Plaintiffs are entitled to reasonable fees and costs as a
13 prevailing party under the ADA and Section 504. *See* 42 U.S.C. § 12205; 29
14 U.S.C. § 794a(b); *Jankey v. Poop Deck*, 537 F.3d 1122, 1130 (9th Cir. 2008); *La*
15 *Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083,
16 1089 (9th Cir. 2010).⁵

17 B. Lodestar

18 a. Hourly Rates

19 The Court finds, based on the evidence submitted, that the following hourly
20 rates are reasonable.⁶

21
22 ⁵ The Court declined to exercise supplemental jurisdiction over Plaintiffs’ state
23 law claims and dismissed those claims without prejudice. Accordingly, Plaintiffs
24 are not entitled to fees and costs as a prevailing party under state law, and are not
25 entitled to a state-law multiplier of the lodestar. *See Chaudhry v. City of Los*
26 *Angeles*, 751 F.3d 1096, 1112 (9th Cir.), *cert. denied sub nom. City of Los*
Angeles, Cal. v. Chaudhry, 135 S. Ct. 295 (2014); *Mangold v. Cal. Pub. Utilities*
Comm’n, 67 F.3d 1470, 1478 (9th Cir. 1995); *City of San Jose v. San Jose Police*
Officers’ Ass’n, 2013 WL 4806453, at *3 (N.D. Cal. Sept. 9, 2013); *Yates v.*
Union Square, 2008 WL 346418, at *4 (N.D. Cal. Feb. 7, 2008).

27 ⁶ *See Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *United Steelworkers of Am.*
28 *v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990); *Camacho v. Bridgeport*
Fin., Inc., 523 F.3d 973, 980 (9th Cir. 2008).

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Name	Title	Hourly Rate
Guy Wallace	Attorney	\$750
Mark Johnson	Attorney	\$700
Andrew Lee	Attorney	\$525
Jennifer Uhrowczik	Attorney	\$450
Kiran Prasad	Attorney	\$450
Michelle Nguyen	Attorney	\$300
Katharine White	Attorney	\$300
Amanda Riley	Attorney	\$300
Chris Springer	Paralegal/Law Clerk	\$235
Charles Greenlee	Paralegal/Law Clerk	\$200
Scott Gordon	Paralegal/Law Clerk	\$200
Sam Marks	Paralegal/Law Clerk	\$200
David A. Borgen	Attorney	\$795
Linda Dardarian	Attorney	\$775
Andrew Lee	Attorney	\$550
Jason Tarricone	Attorney	\$525
Katrina Eiland	Attorney	\$400
Nancy Hanna	Attorney	\$375
Raymond Wendell	Attorney	\$325
Scott G. Grimes	Paralegal/Law Clerk	\$250
Elizabeth Kramer	Paralegal/Law Clerk	\$250
Damon Valdez	Paralegal/Law Clerk	\$225
Wendy E. Whitt	Paralegal/Law Clerk	\$225
Charlotte Nguyen	Paralegal/Law Clerk	\$195
Stuart Kirkpatrick	Paralegal/Law Clerk	\$195
Jinny Kim	Attorney	\$644
Rachael Langston	Attorney	\$473
Alexis Alvarez	Attorney	\$385
Mary Broughton	Paralegal/Law Clerk	\$165

Michael Hsueh	Paralegal/Law Clerk	\$110
Shawna Parks	Attorney	\$695
Ronald Elsberry	Attorney	\$680
Surisa E. Rivers	Attorney	\$550
Trevor Finneman	Attorney	\$375
Law Clerk	Law Clerk	\$230
Shawna L Parks	Attorney	\$695
José R. Allen, Esq.	Attorney	\$1,115.60

b. Hours Worked

Based on the evidence submitted, the Court finds the following hours were reasonably expended:

<i>Willits</i>			
Name	Hourly Rate	Hours	Lodestar
Guy Wallace	\$750	2,902.5	\$2,176,875.00
Mark Johnson	\$700	1,922.4	\$1,345,680
Andrew Lee	\$525	1,034.7	\$543,217.50
Jennifer Uhrowczik	\$450	331.4	\$149,130.00
Kiran Prasad	\$450	272.2	\$122,490.00
Michelle Nguyen	\$300	101.3	\$30,390.00
Katharine White	\$300	76.0	\$22,800.00
Amanda Riley	\$300	217.7	\$65,310.00
Chris Springer	\$235	277.5	\$65,212.50
Charles Greenlee	\$200	534.1	\$106,820.00

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Scott Gordon	\$200	100.1	\$20,020.00
Sam Marks	\$200	1,026.7	\$205,340.00
David A. Borgen	\$795	113.8	\$90,471.00
Linda Dardarian	\$775	1,276.1	\$988,977.50
Andrew Lee	\$550	576.3	\$316,965.00
Jason Tarricone	\$525	278.0	\$145,950.00
Katrina Eiland	\$400	207.3	\$82,920.00
Nancy Hanna	\$375	44.4	\$16,650.00
Raymond Wendell	\$325	133.7	\$43,452.50
Scott G. Grimes	\$250	372.2	\$93,050.00
Elizabeth Kramer	\$250	63.3	\$15,825.00
Damon Valdez	\$225	946.4	\$212,940.00
Wendy E. Whitt	\$225	329.3	\$74,092.50
Charlotte Nguyen	\$195	100.3	\$19,588.50
Stuart Kirkpatrick	\$195	178.5	\$34,807.50
Jinny Kim	\$644	859.4	\$553,453.60
Rachael Langston	\$473	180.2	\$85,234.60
Alexis Alvarez	\$385	28.6	\$11,011.00

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Mary Broughton	\$165	567.9	\$93,703.50
Michael Hsueh	\$110	77.4	\$8,514.00
Shawna Parks (DRLC) ⁷	\$695	101.9	\$70,820.50
Ronald Elsberry	\$680	63.7	\$43,316.00
Surisa E. Rivers	\$550	810.6	\$445,830.00
Trevor Finneman	\$375	112.9	\$42,337.50
Unnamed Law Clerk	\$230	149.3	\$34,339.00
Shawna L Parks	\$695	15.2	\$10,564.00
José R. Allen, Esq.	\$1,115.60	560.2	\$624,962.12
TOTAL			\$9,013,060.32

<i>Carter/Fahmie</i>			
Name	Hourly Rate	Hours	Lodestar
Guy Wallace	\$750	499.7	\$374,775.00
Mark Johnson	\$700	141.2	\$98,840.00
Andrew Lee	\$525	1.7	\$892.50
Charles Greenlee	\$200	11.6	\$2,320.00

⁷ Shawna Parks was the Legal Director / Director of Litigation at DRLC until her departure in 2012. The fees sought for Park’s time spent during her employment with DRLC is designated under “Shawna Parks (DRLC),” and the fees sought for Park’s time spent in connection with her own law practice is designated under “Shawna L Parks.”

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Sam Marks	\$200	4.4	\$880.00
TOTAL			\$477,707.50

<i>Pineda</i>			
Name	Hourly Rate	Hours	Lodestar
Guy Wallace	\$750	188.2	\$141,150.00
Mark Johnson	\$700	142.9	\$100,030.00
Andrew Lee	\$525	67.4	\$35,385.00
Kiran Prasad	\$450	13.5	\$6,075.00
Shawna Parks (DRLC)	\$695	121.6	\$84,512.00
Sage Reeves	\$625	236.9	\$148,062.50
Surisa E. Rivers	\$550	67.2	\$36,960.00
Debra J. Patkin	\$450	410.2	\$184,587.75
Unnamed Law Clerk	\$230	108.5	\$24,955.00
TOTAL			\$761,717.25

<i>Griffin</i>			
Name	Hourly Rate	Hours	Lodestar
Guy Wallace	\$750	0.8	\$600.00
Mark Johnson	\$700	6.5	\$4,550.00
Shawna Parks (DRLC)	\$695	2.0	\$1,390.00
Surisa E.	\$550	18.6	\$10,230.00

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Rivers			
Trevor Finneman	\$375	1.4	\$490.00
TOTAL			\$17,260.00

The Court also finds, based on the evidence submitted, that the above-listed hours expended by non-appointed class counsel Shawna Parks and Jose Allen, and hours expended in connection with the State Court Actions, benefitted the class in this case. See F.R.C.P. 23(h) 2003 Advisory Committee Notes; *Winger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1121 (9th Cir. 2002).

Accordingly, the Court awards \$10,269,745.07 in reasonable attorneys' fees to Plaintiffs' counsel.

C. Costs

Plaintiffs seek \$1,631,511.98 in costs as follows: (1) SWCKW: \$1,079,353.37; (2) GBDH: \$231,937.31; (3) LAS-ELC: \$276,257.48; (4) DRLC: \$43,918.94; and (5) Parks: \$44.88.

(1) SWCKW

Plaintiffs seek a total of \$1,079,353.37 in costs expended by SWCKW as follows:⁸

CATEGORY	AMOUNT REQUESTED
Copying/Scanning (external)	\$94,122.20
Copying (internal)	\$86,565.00
Document Management	\$393,837.20
Experts	\$324,429.95
Filing/Service Fees	\$23,702.74
Legal Research	\$34,395.54

⁸ The amount of costs sought on behalf of SWCKW is based on the amounts set forth in the declarations of Eugenia Gueorguieva.

1	Mediation	\$58,929.50
2	Messenger	\$1,853.90
3	Overnight Mail	\$2,169.79
4	Telephonic Court Appearance	\$473.00
5	Travel and Transportation	\$52,953.09
6	Depositions (video services)	\$4,472.50
7	Postage	\$509.96
8	System Access Fees	\$939.00
9	TOTAL	\$1,079,353.37

11 Copying (internal). SWCKW seeks \$86,565.00 in internal copying costs.
12 The evidence demonstrates SWCKW made 290,629 internal copies for this action
13 and 11,222 in connection with the State Court Actions, at a cost of \$0.20 per page,
14 totaling \$60,370.20. Accordingly, the Court awards \$60,370.20 in costs expended
15 by SWCKW for internal copying.

16 Travel and Transportation. SWCKW seeks \$52,953.09 in travel and
17 transportation costs. SWCKW submits evidence verifying \$51,791.49 in travel
18 and transportation costs were expended by SWCKW. SWCKW declares that it
19 cannot locate receipts confirming \$9 and \$409.80 in travel expenses purportedly
20 expended on December 15, 2012 and January 11, 2013, respectively, and therefore
21 do not seek reimbursement for those costs. SWCKW fails to submit evidence that
22 \$742.80 was actually expended for airfare on March 16, 2012.⁹ Accordingly, the
23 Court decreases travel and transportation costs by \$1,161.60, and awards
24

25 ⁹ SWCKW submits evidence that the \$742.80 travel cost sought “is consistent
26 with airfares charged by Southwest Airlines for other events that took place in Los
27 Angeles during the above-captioned litigation,” but fails to submit evidence of the
28 actual cost for the March 16, 2012 airfare requested. *See Vectren Commc’ns
 Servs. v. City of Alameda*, 2014 WL 3612754, at *7 (N.D. Cal. July 22, 2014);
 Butler v. Homeservices Lending LLC, 2014 WL 5460447, at *9 (S.D. Cal. Oct. 27,
 2014).

1 \$51,791.49 for travel and transportation costs expended by SWCKW.

2 Other Categories. The evidence submitted demonstrates that the amount of
3 the costs sought for the remaining categories were reasonably expended by
4 SWCKW. Accordingly, the Court awards the following amounts for costs
5 reasonably expended by SWCKW: (1) Copying/Scanning (external): \$94,122.20;
6 (2) Document Management: \$393,837.20; (3) Experts: \$324,429.95; (4)
7 Filing/Service Fees: \$23,702.74; (5) Legal Research: \$34,395.54; (6) Mediation:
8 \$58,929.50; (7) Messenger: \$1,853.90; (8) Overnight Mail: \$2,169.79; (9)
9 Telephonic Court Appearance: \$473.00; (10) Depositions (video services):
10 \$4,472.50; (11) Postage: \$509.96; and (12) System Access Fees: \$939.00.

11 The Court therefore awards \$1,051,996.97 in costs reasonably expended by
12 SWCKW.¹⁰

13 (2) **GBDH**

14 Plaintiffs seek \$231,937.31 in costs expended by GBHD in this action as
15 follows:

CATEGORY	AMOUNT REQUESTED
Court Reporters/Transcripts	\$10,267.05
Special masters/Mediators/Arbitrators	\$7,816.12
Copying Costs - In-house	\$10,664.80
Depositions	\$3,100.00
Experts	\$157,804.65
Overnight Mail	\$180.06
Copying and Scanning - outside agency	\$1,023.12

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¹⁰ Plaintiffs seek costs expended by SWCKW in this action and in connection with
27 the State Court Actions. The Court finds, based on the evidence submitted, that
28 costs which were reasonably expended by SWCKW in connection with the State
Court Actions benefitted the class in this litigation.

Filing/Service Fees	\$7,360.90
Class Notice:	\$990.00
Postage/USPS	\$64.04
Legal Research	\$19,812.27
Telephone/Conference Calls	\$45.33
Travel and Transportation	\$10,362.35
Travel – Lodging	\$2,446.62
TOTAL	\$231,937.31

Taxable Costs. Plaintiffs seek \$18,083.17 in taxable costs expended by GBDH (i.e., \$10,267.05 (court reporters/transcripts), and \$7,816.12 (Special masters/Mediators/Arbitrators). Accordingly, the Court decreases GBDH’s costs by \$18,083.17.¹¹ See Fed. R. Civ. P. 23(h); Fed. R. Civ. P. 54; Local Rule 54.

Other Categories. The evidence submitted demonstrates that the amount of costs sought for the remaining categories were reasonably expended by GBDH in this action. Accordingly, the Court awards the following amounts for costs reasonably expended by GBDH in this action: (1) Copying Costs - In-house: \$10,664.80; (2) Depositions: \$3,100.00; (3) Expert Fees: \$157,804.65; (4) Overnight Mail: \$180.06; (5) Copying and Scanning - outside agency: \$1,023.12; (6) Filing Service Fees: \$7,360.90; (7) Class Notice: \$990.00; (8) Postage USPS: \$64.04; (9) Legal Research: \$19,812.27; (10) Telephone/Conference Calls: \$45.33; (11) Travel and Transportation: \$10,362.35; and (12) Travel – Lodging: \$2,446.62.

The Court therefore awards \$213,854.14 in costs reasonably expended by GBDH.

¹¹ To the extent not already including in Plaintiff’s pending application to the Clerk to tax costs (Dkt. No. 377), Plaintiffs are directed to apply for all taxable costs with the Clerk pursuant to Rule 54.

1 (3) **LAS-ELC**

2 Plaintiffs seek \$276,257.48 in costs expended by LAS-ELC in this action as
3 follows:

CATEGORY	AMOUNT REQUESTED
clerk’s fees	\$230.00
depositions	\$539.70
reproducing exhibits to deposition	\$9.99
Special Master	\$27,697.87
copying (in house)	\$6,721.40
copying/scanning (outside)	\$28,189.65
document management and hosting	\$16,290.04
Experts	\$167,325.98
legal research	\$245.10
mediation	\$21,462.98
messenger	\$134.29
overnight mail	\$69.37
travel and transportation	\$5,418.33
long distance phone charges	\$119.78
photo reproduction	\$20.92
temporary staffing	\$872.08
investigator fees	\$910.00
TOTAL	\$276,257.48

4 **Taxable Costs.** Plaintiffs seek \$28,477.56 in taxable costs expended by
5 LAS-ELC (i.e., \$230 (clerk’s fees), \$539.70 (depositions), \$9.99 (reproducing
6 exhibits to deposition), and \$27,697.87 (Special Master fees)). Accordingly, the
7 Court decreases LAS-ELC’s costs by \$28,477.56. *See* Fed. R. Civ. P. 23(h); Fed.
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1 R. Civ. P. 54; Local Rule 54.

2 Long Distance Phone Charges. Plaintiffs originally requested \$119.78 in
3 long distance phone charges purportedly expended by LAS-ELC. LAS-ELC,
4 however, declares that it was unable to locate evidence supporting any of the long
5 distance phone charges, and therefore will not be seeking reimbursement of those
6 costs. Accordingly, the Court does not award LAS-ELC any amount for long
7 distance phone charges.

8 Other Categories. The evidence submitted demonstrates that the amount of
9 costs sought for the remaining categories were reasonably expended by LAS-ELC
10 in this action. Accordingly, the Court awards the following amounts for costs
11 reasonably expended by LAS-ELC: (1) copying (in house): \$6,721.40; (2)
12 copying/scanning (outside): \$28,189.65; (3) document management and hosting:
13 \$16,290.04; (4) expert fees: \$167,325.98; (5) legal research: \$245.10; (6)
14 mediation fees: \$21,462.98; (7) messenger: \$134.29; (8) overnight mail: \$69.37;
15 (9) travel and transportation: \$5,418.33; (10) photo reproduction charges: \$20.92;
16 (11) temporary staffing: \$872.08; and (12) investigator fees: \$910.00.

17 The Court therefore awards \$247,660.14 in costs reasonably expended by
18 LAS-ELC.

19 (4) DRLC

20 Plaintiffs seek \$40,908.94 in costs expended by DRLC as follows:

CATEGORY	AMOUNT REQUESTED
Clerks' fees	\$1,891.45
Depositions	\$10,135.95
Interpreter's and Translator Fees	\$2,067.50
Fees for Service of Process	\$1,028.00
Reporter's Transcripts	\$789.00

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Reproduction of Documents - Chambers Copies	\$1,736.40
Other Costs - Photographs	\$6,075.00
Copying and Scanning - outside agency	\$4,050.09
Copying Costs - In-house	\$833.98
Filing/Service Fees	\$87.40
Experts	\$10,821.12
Messenger	\$99.00
Overnight Mail	\$261.13
Travel and Transportation	\$2,891.86
Postage	\$45.76
System Access Fees	\$580.30
Translation of Documents	\$145.00
Official Court Reporter	\$380.00
TOTAL	\$43,918.94

Taxable Costs. Plaintiffs seek \$23,723.30 in taxable costs expended by DRLC (i.e., \$1,891.45 (clerks fees), \$10,135.95 (Depositions), \$2,067.50 (Interpreter’s and Translator Fees), \$1,028.00 (Fees for Service of Process), \$789.00 (Reporter’s Transcripts), \$1,736.40 (Reproduction of Documents - Chambers Copies), and \$6,075.00 (Other Costs - Photographs)). Accordingly, the Court decreases DRLC’s costs by \$23,723.30. *See* Fed. R. Civ. P. 23(h); Fed. R. Civ. P. 54; Local Rule 54.

Other Categories. The evidence submitted demonstrates that the entire amount of costs sought for the remaining categories were reasonably expended by DRLC in this action. Accordingly, the Court awards the following amounts for costs reasonably expended by DRLC: (1) Copying and Scanning - outside agency: \$4,050.09; (2) Copying Costs - In-house: \$833.98; (3) Filing/Service Fees: \$87.40; (4) Expert Fees: \$10,821.12; (5) Messenger: \$99.00; (6) Overnight

1 Mail: \$261.13; (7) Travel and Transportation: \$2,891.86; (8) Postage: \$45.76; (9)
2 System Access Fee: \$580.30; (10) Translation of Documents: \$145.00; and (11)
3 Official Court Reporter: \$380.00.¹²

4 The Court therefore awards \$20,195.64 in costs reasonably expended by
5 DRLC.

6 **(5) Parks**

7 Plaintiffs seek \$44.88 in costs expended by Parks. The evidence submitted
8 demonstrates the \$44.88 in costs were reasonably expended and benefitted the
9 class. The Court therefore awards \$44.88 in costs reasonably expended Parks.

10 **IV. CONCLUSION**

11 Accordingly, the Court **GRANTS** the Motion, and awards \$10,269,745.07
12 in attorneys' fees and \$1,533,751.77 in costs to Plaintiffs.

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14 **IT IS SO ORDERED.**

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16 DATED: August 25, 2016.

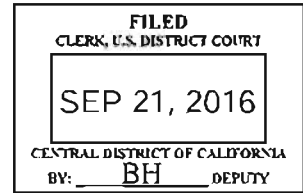
FOR PUBLIC RELEASE

17 Honorable Consuelo B. Marshall
18 United States District Judge

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26 _____
27 ¹² Plaintiffs seek costs expended by DRLC in this action and in connection with
28 the State Court Actions. The Court finds, based on the evidence submitted, that
costs which were reasonably expended by DRLC in connection with the State
Court Actions benefitted the class in this litigation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



Trevor Woods et al.,
Plaintiffs,
v.
John B. Fagan et al.,
Defendants.

CV 14-8374-VAP (SPx)

**ORDER GRANTING MOTION
FOR ATTORNEYS' FEES
[Doc. No. 158]**

On July 7, 2016, following a jury trial, this Court entered a Judgment in favor of Plaintiffs Trevor Woods and Tyra Woodson and against Defendants John Fagan and Daniel Martinez. (Doc. No. 154.) On August 3, 2016, Plaintiff filed a Motion for Attorneys' Fees. (Doc. No. 158.) On September 19, 2016, the court held a hearing and the parties submitted on their papers. After considering the papers filed in support of, and in opposition to, the Motion, the Court GRANTS the Motion.

I. BACKGROUND

On November 19, 2013, Defendants Fagan and Martinez, both of whom are Long Beach Police Department ("LBPD") officers, shot and killed Tyler Woods following a foot pursuit. Woods' parents, Plaintiffs Trevor Woods and Tyra Woodson, filed a complaint under 42 U.S.C. § 1983 alleging Defendants' actions violated their Fourteenth Amendment liberty interest in the companionship and society of their son.

The issues of liability and damages were tried to a jury, which returned a special verdict in favor of Plaintiffs on their claims. The parties stipulated to an amount of \$10,000.00 in punitive damages if the jury found liability for them. (Doc. No. 154.) The jury returned a special verdict awarding Plaintiffs a total of \$1,050,000.00 in compensatory damages (Doc. No. 145).

On July 7, 2016, this Court entered a judgment in Plaintiffs' favor in the sums of \$1,050,000.00 in compensatory damages and \$10,000.00 in punitive damages. (Doc. No. 154.)

On August 3, 2016, Plaintiff filed a Motion for Attorneys' Fees pursuant to 42 U.S.C. § 1988. (Doc. No. 158.) On August 22, 2016, Defendants filed an Opposition. (Doc. No. 165.) On August 29, 2016, Plaintiff filed a Reply. (Doc. No. 170.)

II. LEGAL STANDARD

Fees in § 1983 cases are governed by 42 U.S.C. § 1988, which provides:

In any action or proceeding to enforce a provision of section [] . . . 1983 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs . . . 42 U.S.C. § 1988(b).

“The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances.” Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (quotation marks omitted). The analysis of attorney's fees is twofold. The Court first must determine whether or not the party seeking fees is the prevailing

party. Fischer v. SJB-P.D., Inc., 214 F.3d 1115 (9th Cir. 2000); Chabner v. United of Omaha Life Ins. Co., 1999 WL 33227443 (N.D. Cal. 1999). A plaintiff is the prevailing party when the “resolution of the dispute . . . changes the legal relationship between itself and the defendant.” Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989). In other words, “plaintiffs may be considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” Farrar v. Hobby, 506 U.S. 103, 109 (1992) (internal citation omitted).

III. DISCUSSION

Plaintiffs were the prevailing party at trial. The jury found that Defendants violated Plaintiffs’ constitutional rights and awarded them \$1,050,000.00 in compensatory damages, and the parties stipulated to \$10,000.00 in punitive damages. Defendants agree Plaintiffs are entitled to reasonable attorneys’ fees, but object to the sum sought, \$365,275.15, as unreasonable and excessively high. (Opp. at 1-2.) Defendants’ argument is unpersuasive.

“In determining a reasonable attorney’s fee, the district court’s first step is to calculate a ‘lodestar’ by multiplying the number of hours it finds the prevailing party expended on the litigation by a reasonable hourly rate.” McGrath v. County of Nevada, 67 F.3d 248, 252 (9th Cir. 1995) (citing Hensley, 461 U.S. at 433). The Court then decides whether to increase or decrease the lodestar amount by evaluating the factors enunciated in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976).

The Kerr factors are: time and labor required; the novelty and difficulty of the questions involved; the skill needed to perform the legal service properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee, whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the “undesirability” of the case; the nature and length of the professional relationship with the client; and awards in similar cases. Id.

Plaintiffs’ counsel, Mr. Brian Dunn, seeks \$180,404.40 in fees based on an hourly rate of \$790 per hour and a total of 228.36 hours; Mr. John Fattahi seeks \$119,952.00 based on an hourly rate of \$630.00 per hour and a total of 190.40 hours; and Ms. Megan Gyongyos seeks \$64,918.75 based on an hourly rate of \$425.00 and a total of 152.75 hours. (Mot. at 21.) Plaintiffs’ counsel are not seeking an increase from those lodestar amounts based on the Kerr factors.

1. Reasonable Hourly Rate

“The hourly rate for successful civil rights attorneys is to be calculated by considering certain factors, including the novelty and difficulty of the issues, the skill required to try the case, whether or not the fee is contingent, the experience held by counsel and fee awards in similar cases.” Moreno v. City of Sacramento, 534 F.3d 1106, 1114 (9th Cir. 2008). In addition, the court is guided by “the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.” Trevino v. Gates, 99 F.3d 911, 925 (9th Cir. 1996).

In support of their requested hourly rates, Mr. Dunn, Mr. Fattahi, and Ms. Gyongyos submitted declarations detailing their skills and experience as civil rights attorneys and past fee awards they have received. (See generally Dunn Decl., Fattahi Decl., Gyongyos Decl.) Mr. Dunn, who served as lead counsel for Plaintiffs, specializes in police misconduct civil rights litigation. (Dunn Decl. ¶ 6.) He has been counsel on numerous civil rights cases for over 20 years in which he has obtained substantial verdicts and settlements. (Dunn Decl. ¶¶ 6-8.) Mr. Fattahi has ten years of experience with federal civil rights litigation and has practiced police excessive force litigation almost exclusively for the past seven years. (Fattahi Decl. ¶ 5.) Mr. Fattahi collaborated with Mr. Dunn on nearly all aspects of the trial, including researching applicable law and marshaling evidence, participating in the jury selection, and examining three civilian and six hostile witnesses. (Fattahi Decl. ¶ 3.) Ms. Gyongyos, Mr. Dunn's associate, has more than three years of experience litigating police misconduct cases and had primary responsibility of the day-to-day management of this case since April 2014. (Gyongyos Decl. ¶¶ 3, 5.) Her involvement included drafting Plaintiffs' complaint, propounding written discovery, and preparing numerous pretrial and trial documents. (Gyongyos Decl. ¶ 3.)

Considering the prevailing rate in the community for similar work performed by attorneys of comparable skill, experience, and reputation, the Court finds a reasonable hourly rate for Mr. Dunn is \$750 per hour, for Mr. Fattahi is \$550 per hour, and for Ms. Gyongyos is \$375 per hour.

The Court notes that Plaintiffs' counsel "served the public interest by vindicating important constitutional rights." McCown v. City of Fontana, 565 F.3d 1097, 1105 (9th Cir. 2008) (citing City of Riverside v. Rivera, 477 U.S. 561, 572

(1986)). Their representation of Plaintiffs was not without risk given, for example, that both Plaintiffs were incarcerated at the time of the trial. Moreover, the hourly rates listed above are in line with the market rates of similarly experienced attorneys in the community (see generally Galipo Decl., Sobel Decl.), and the attorneys in this case are not requesting a fee multiplier.

2. Reasonable Hours

The Court has reviewed each and every billing entry in Plaintiffs' fee request, and eliminated the fees requested by Plaintiff for (1) tasks on which excessive time was spent, (2) unnecessary, excessive, or duplicative entries, (3) time charged for clerical or secretarial tasks. The descriptions in the billing entries submitted were satisfactorily detailed, and the Court did not find many instances needing reduction. After reviewing the billing entries, the Court reduced Mr. Dunn's hours by 4.5 hours, Mr. Fattahi's hours by 6.4 hours, and Ms. Gyongyos's hours by 7.48 hours.

Plaintiffs' counsel bears the burden of establishing entitlement to an attorney's fee award and "documenting the appropriate hours expended and hourly rates." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The Court maintains discretion to reduce the number of hours requested where an attorney's block billing makes it difficult to identify whether the hours were reasonably expended. See Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th Cir. 2007) ("We do not quarrel with the district court's authority to reduce hours that are billed in block format. The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked."); R.S., et al, SACV11-536 AG (RNBx) at 28 (reducing an attorney's "trial preparation" hours by 20 percent based on block billing).

The trial court, due to its familiarity with the case, is in the best position to evaluate the reasonableness of the hours requested. Moreno, 534 F.3d 1106, 1116 (9th Cir. 2008). Here, the Court has reduced the hours of Plaintiffs' counsel where the hours were excessive, duplicative, or charged for clerical or secretarial tasks. For example, the Court deducted 6.2 hours from Mr. Fattahi's multiple logs of "Review

documents and depositions, prepare for trial” because the logs did not identify discrete tasks and the time spent appeared excessive. The Court also deducted the 5.0 hours Ms. Gyongyos logged for assisting in the preparation of Exhibit Binders because that is a clerical task.

In conclusion, the Court sees no reason to depart from the lodestar amount, and the “presumptively reasonable” lodestar amounts for Plaintiffs’ counsel are as follows. See Jordan v. Multnomah Cnty., 815 F.2d 1258, 1262 (9th Cir. 1987).

Attorney/ Paralegal	Hourly Rate	Hours	Lodestar
Dunn	\$750	223.86	\$167,895.00
Fattahi	\$550	184.00	\$101,200.00
Gyongyos	\$375	145.27	\$54,476.25
Total			\$323,571.25

3. Reasonable Out-of-Pocket Expenses

Defendants have not objected to Mr. Fattahi’s request for out-of-pocket litigation expenses totaling \$810.15. In light of the documentation attached to Mr. Fattahi’s declaration, the Court views those expenses as reasonable and awards him \$810.15 for reasonable out-of-pocket expenses in addition to the attorney’s fees noted above.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS Plaintiffs' Motion for Attorneys' Fees, and awards fees in the amount of \$323,571.25.

IT IS SO ORDERED.

Dated: 9/21/16


FOR PUBLIC RELEASE
Virginia A. Phillips
Chief United States District Judge



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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MATTEL, INC., et al.)
)
Plaintiffs,)
)
v.)
)
MGA ENTERTAINMENT, INC., et al.)
)
Defendants.)
)
_____)
)
AND CONSOLIDATED ACTIONS)
)
_____)

CASE NO. CV 04-9049 DOC (RNBx)

**ORDER GRANTING IN PART
AND DENYING IN PART MGA
ENTERTAINMENT, INC., MGA
ENTERTAINMENT (HK) LTD.,
MGAE DE MEXICO S.R.L. DE CV,
AND ISAAC LARIAN'S
APPLICATION FOR AN AWARD
OF ATTORNEYS' FEES AND
COSTS**

Before the Court is MGA Entertainment, Inc., MGA Entertainment (HK) Limited, MGAE de Mexico S.R.L. de CV, and Isaac Larian (collectively "MGA")'s Application for Attorneys' Fees and Costs Under Section 505 of the Copyright Act. The Court referred the Application to the Special Master for Discovery. See Fed. R. Civ. P. 53(a)(C). Mattel did not initially object to the Special Master's appointment, but states that it "did not consent to the [Special] Master's evaluation of MGA's fee applications." Because any interest in convenience must yield to Mattel's right to a judicial determination, the Court STRIKES the Special Master's Report and Recommendation.

1 **I. Introduction**

2 Section 505 of the Copyright Act provides that “[i]n any action under this title, the court
3 in its discretion may allow the recovery of full costs by or against any party other than the United
4 States or an officer thereof.” 17 U.S.C. § 505. “[T]he court may also award a reasonable
5 attorney’s fee to the prevailing party as part of the costs.” *Id.* The statute’s use of the word
6 “may” makes clear that a prevailing party is not always entitled to recover its costs. *Fogerty v.*
7 *Fantasy, Inc.*, 510 U.S. 517, 114 S.Ct. 1023 (1994).

8 The court’s exercise of discretion under Section 505 is guided by a single equitable
9 inquiry: did the successful prosecution or defense “further the purposes of the Copyright Act[?]”
10 *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 559 (9th Cir. 1996); *Perfect 10, Inc. v. CCBill LLC*, 488
11 F.3d 1102, 1120 (9th Cir. 2007). Factors relevant to that inquiry may include “frivolousness,
12 motivation, objective unreasonableness (both in the factual and in the legal components of the
13 case) and the need in particular circumstances to advance considerations of compensation and
14 deterrence.” *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 156 (3d Cir. 1986).¹ These factors are
15 not exclusive, *id.*, or mandatory, *Fogerty*, 94 F.3d at 558, and must always yield to the purposes
16 of the Copyright Act, *Fogerty*, 510 U.S. at 534 n. 19. “Faithfulness to the purposes of the
17 Copyright Act [] is the pivotal criterion.” *Fogerty*, 94 F.3d at 558.

18 **II. Discussion**

19 Unlike many other statutes, the Copyright Act limits the rights it confers, and prevents
20 other jurisdictions from enlarging those rights. 17 U.S.C. § 301. Thus, “the policies served by
21 the Copyright Act are more complex, more measured, than simply maximizing the number of
22 meritorious suits for copyright infringement.” *Fogerty*, 510 U.S. at 526. By restricting the rights
23 of copyright holders, the Act ensures that “private motivation [] ultimately serve[s] the cause of
24 promoting broad public availability of literature, music, and the other arts.” *See id.* at 526-27
25 (quoting *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156, 95 S.Ct. 2040 (1975)).
26 “The primary objective of copyright is not to reward the labor of authors, but ‘[t]o promote the

27 _____
28 ¹ Mattel is not an impecunious litigant. *See Mattel, Inc. v. Greiner & Hauser GmbH*, 354 F.3d 857, 859 (9th Cir. 2003).

1 Progress of Science and useful Arts.” *Feist Publ’ns, Inc. v. Rural Tele. Serv. Co.*, 499 U.S. 340,
2 361, 111 S.Ct. 1282 (1991). This purpose is satisfied when the public can “build freely upon the
3 ideas and information” in the public domain. *Id.* at 349-50.

4 A. Recovery of Fees

5 In this case, Mattel claimed that it owned valid copyrights in the concept sketches and
6 sculpts for the “Bratz” line of dolls and that every generation of “Bratz” dolls released by MGA
7 infringed those copyrights. The breadth of Mattel’s infringement claim corresponded with its
8 request for “more than \$1 billion dollars in copyright damages” and an “injunction prohibiting
9 MGA from producing or marketing virtually every Bratz female fashion doll, as well as any
10 future dolls substantially similar to Mattel’s copyrighted Bratz works.” *Mattel, Inc. v. MGA*
11 *Entm’t, Inc.*, 616 F.3d 904, 910 (9th Cir. 2010). This request for relief was predicated on
12 Mattel’s mistaken expectation that it owned the “ideas” in the copyrighted works; and the mere
13 specter of that relief may have clouded MGA’s business prospects, bolstered Mattel’s status, and
14 changed the landscape of the fashion doll industry. *Cf. Ideal Steel Supply Corp. v. Anza*, ___
15 F.3d ___, 2011 WL 2557618, at *19 (2d Cir. June 28, 2011) (“In light of (i) the broad scope of
16 RICO (and what might constitute proceeds from a RICO ‘predicate act’), and (ii) the specter of
17 paying treble damages, the mere threat of such a suit would chill competition.”).

18 The Ninth Circuit held that only a small minority of Mattel’s claim “might” be
19 reasonable. *Mattel*, 616 F.3d at 917. This Court agreed on remand, finding “no indicia of
20 sufficient disagreement” that all but six Bratz dolls did not infringe the concept sketches and
21 sculpts. *Mattel, Inc. v. MGA Entm’t, Inc.*, ___ F. Supp. 2d ___, 2011 (C.D. Cal. Jan. 5, 2011).
22 Regardless of Mattel’s disputed claim to ownership of the concepts sketches and sculpts, these
23 rulings, prompted by MGA, prevented Mattel from stifling the dissemination of “fashion dolls
24 with a bratty look or attitude,” *Mattel*, 616 F.3d at 916, and encouraged the widespread
25 “production of original . . . artistic . . . expression for the good of the public.” *Fantasy*, 94 F.3d
26 at 557 (quoting *Fogerty*, 510 U.S. at 524).²

27 _____
28 ² Contrary to Mattel’s argument, its copyright claim affected more than just “which
company would provide Bratz to the public.” Mattel’s request for an injunction, as well

1 There are compelling equitable reasons to award MGA its attorneys' fees. MGA secured
2 the public's interest in a robust market for trendy fashion dolls populated by multiple toy
3 companies, not just Mattel or even MGA. *Cf. Fogerty*, 94 F.3d at 556 ("Fogerty's vindication of
4 his copyright in "The Old Man Down the Road" secured the public's access to an original work
5 of authorship and paved the way for future original compositions-by Fogerty and others-in the
6 same distinctive "Swamp Rock" style and genre."); *see also Mattel*, 616 F.3d at 917 ("Mattel
7 can't claim a monopoly over fashion dolls with a bratty look or attitude, or dolls sporting trendy
8 clothing-these are all unprotectable ideas."). A fee award accounts for this lawsuit's detrimental
9 impact on MGA's sales, as well as the economic benefit Mattel may have obtained by distracting
10 its primary competitor with litigation. *Cf. Fogerty*, 94 F.3d at 556 ("Further, the district court
11 found that a fee award was appropriate to help restore to Fogerty some of the lost value of the
12 copyright he was forced to defend."). MGA's successful defense also nudged copyright law in
13 the direction of "free expression" by appealing to basic principles about the unprotectability of
14 ideas, instead of relying on "technical defense[s], such as the statute of limitations, laches, or the
15 copyright registration requirements." *Id.* MGA's contribution to the state of the law in the field
16 of copyright in a case of this magnitude and notoriety cannot be understated; its failure to
17 vigorously defend against Mattel's claims could have ushered in a new era of copyright litigation
18 aimed not at promoting expression but at stifling the "competition" upon which America thrives.
19 *Mattel*, 616 F.3d at 918; *cf. Fogerty*, 94 F.3d at 556 ("Finally, the benefit conferred by Fogerty's
20 successful defense was not slight or insubstantial relative to the costs of litigation.").

21 Mattel argues that MGA's successful defense could not have furthered the purposes of
22 copyright law because Mattel's underlying claim was reasonable. This argument is factually and
23 legally incomplete. In many cases involving reasonable claims, a successful defense is no more
24 effective than a successful prosecution at furthering the purposes of copyright law, and a fee
25 award to the defendant is therefore inappropriate. *See Lotus Dev. Corp. v Borland Int'l, Inc.*,

26 _____
27 as the legal reasoning offered in support of that request, attempted to justify a restriction
28 on *every other prospective doll designer* from producing "fashion dolls with a bratty look
or attitude, or dolls sporting trendy clothing." *Mattel*, 616 F.3d at 916.

1 140 F.3d 70, 75 (1st Cir. 1998); *Matthew Bender & Co. v. W. Publ'g Co.*, 240 F.3d 116, 122 (2d
2 Cir. 2001); *see also Harris Custom Builders Inc. v. Hoffmeyer*, 140 F.3d 728, 730-31 (7th Cir.
3 1998). But that is a rule of thumb, not rule of law, and Mattel's insistence that objective
4 unreasonableness is a prerequisite to the recovery of costs under Section 505 defies clear
5 authority to the contrary.

6 Indeed, Justice Thomas wrote separately in *Fogerty* to express concern about the
7 disparate treatment of prevailing parties seeking attorneys' fees under identically worded
8 statutes. Justice Thomas' concurrence recognized that unreasonableness is not a prerequisite to
9 the recovery of attorneys' fees in a copyright case:

10 Under the Title VII provision, a prevailing plaintiff 'ordinarily is to be awarded
11 attorney's fees in all but special circumstances,' whereas a prevailing defendant is
12 to be awarded fees only 'upon a finding that plaintiff's action was frivolous,
13 unreasonable, or without foundation.' *By contrast*, under the Court's decision
14 today, prevailing plaintiffs and defendants in the copyright context 'are to be
15 treated alike,' and 'attorney's fees are to be awarded to prevailing parties only as a
16 matter of the court's discretion.'

17 *Fogerty*, 510 U.S. at 536 (emphasis added) (Thomas, J., concurring in judgment).

18 In any event, Mattel's claim – that the reproduction of the look of a “girl with too much
19 makeup on” must be remedied by a billion dollars in damages and injunctive relief – is far less
20 reasonable than the claim in *Fogerty*, which reached the jury in its entirety. 94 F.3d at 556.³ By
21 and large, the protected features of subsequent generation “Bratz” dolls “are nothing like” the
22 concept sketches and sculpts to which Mattel claimed ownership. *Mattel*, 616 F.3d at 917.
23 Differences in the “fashions and hairstyles” are plainly evident and Mattel never argued that any
24 such similarities existed. Instead, Mattel claimed that the *types* and *placement* of features

25 _____
26 ³ The Ninth Circuit awarded defendant his fees and costs on appeal, even though
27 plaintiff's appeal raised close and difficult legal issues. *See Fogerty*, 94 F.3d at 561.
28 There was no discussion of reasonableness; the court considered it sufficient that “it
served the purposes of the Copyright Act for [defendant] to defend an appeal so that the
district court's fee award would not be taken away from him.” *Id.*

1 depicted in the concept sketches and sculpts were protectable merely because they made the
2 dolls “look younger.” *Mattel*, 2011 WL 1114250, at *16. But it is well-established that
3 copyright protection does not extend to ideas, especially not ubiquitous ideas like young and
4 fashionable females. *Id.*; *see also Mattel*, 616 F.3d at 917. Mattel had been reminded of this
5 black letter law in prior litigation. *See, e.g., Mattel, Inc. v. Goldberger Doll Mfg. Co.*, 365 F.3d
6 133, 136 (2d Cir. 2004) (“An upturned nose, bow lips, and wide eyes are the ‘idea’ of a certain
7 type of doll face. That idea belongs not to Mattel but to the public domain.”).

8 Mattel argues that its claim could not have been unreasonable because the prior district
9 court judge entered its requested injunctive relief. Far from demonstrating the reasonableness of
10 its copyright claim, the fact that Mattel convinced a judicial officer to commit legal error
11 underscores the value of MGA’s persistent defense in furthering the purposes of copyright law.
12 Judges occasionally make mistakes, and sometimes, as in this case, those mistakes are
13 unreasonable. *See Mattel*, 616 F.3d at 917 (“It might have been reasonable to hold that *some* of
14 the Bratz dolls were substantially similar to Bryant’s sketches, especially those in the first
15 generation. But we fail to see how the district court could have found the vast majority of Bratz
16 dolls . . . substantially similar[.]”). MGA’s successful defense prevented that error from
17 affecting the outcome of this lawsuit and setting poor precedent in the field of copyright.

18 Mattel also argues that its copyright claim did not offend the policies served by copyright
19 law because some evidence supported its ultimately unsuccessful assertion of ownership over the
20 concept sketches and sculpts. But ownership of the copyrighted work is only one element of a
21 successful copyright claim, and it is often uncontested. *See Feist Publ’ns, Inc. v. Rural Tele.*
22 *Serv. Co.*, 499 U.S. 340, 361, 111 S.Ct. 1282 (1991); *see, e.g., Fogerty*, 94 F.3d at 556. Even if
23 a plaintiff’s assertion of ownership to a valid copyright is reasonable or even uncontested, the
24 claim may still aspire to stifle works that “build freely upon the ideas and information” in the
25 public domain, and a successful defense may further the purposes of the Act. *Id.*; *Feist*, 499
26 U.S. at 349-50. The danger of over-aggressive copyright prosecution that concerned the
27 Supreme Court in *Fogerty* was exemplified not by Mattel’s assertion of ownership over the
28 copyrighted works but by its pursuit of grossly overbroad monetary and injunctive relief.

1 Mattel finally argues that its good faith cannot be questioned because its motivation in
2 filing suit is the subject of a separate action presently pending before this Court and in which
3 Mattel has filed a jury demand.⁴ Though *Lieb* discussed “motivation” as a relevant factor, “a
4 finding of bad faith, frivolous or vexatious conduct is no longer required,” *Fogerty*, 94 F.3d at
5 960, and the Court fails to see its applicability here. Had Mattel advanced a meritorious
6 copyright claim, the presence of a nefarious motivation (excepting a purpose to “harass, cause
7 unnecessary delay, or needlessly increase the cost of litigation,” *see* Fed. R. Civ. P. 11) might not
8 have entitled MGA to a fee award. *Lotus Dev. Corp.*, 140 F.3d at 75 (“Arguably, there is
9 nothing inherently improper about bringing a claim that is well-founded in law and fact against
10 one’s competitors, even when legal action, if successful, will inflict severe economic
11 consequences upon them.”). Similarly, the Copyright Act’s interest in creative freedom is no
12 more vindicated by a successful defense against an unreasonable claim brought by a mischievous
13 plaintiff as it is by a successful defense against an unreasonable claim brought by a clean-hearted
14 plaintiff. *See Screenlife Establishment v. Tower Video, Inc.*, 868 F. Supp. 47, 51-52 (S.D.N.Y.
15 1994) (citing *Diamond Star Bldg. Corp. v. Freed*, 30 F.3d 503 (4th Cir. 1994)). Mattel’s claim
16 posed a serious threat to the public’s access to free and competitive expression; the possibility
17 that Mattel ignored decades-old principles about the unprotectability of ideas in good faith is not
18 an excuse and does not diminish the benefits society will reap as a result of MGA’s successful
19 defense.

20 B. Calculation of Attorneys’ Fees and Costs

21 1. Invoices

22 MGA has filed its attorney invoices in support of its Application and, pursuant to this
23
24

25 ⁴ In support of its argument that Mattel acted in bad faith, MGA asks the Court to
26 consider the conduct of Mattel’s attorneys. However, the Court’s duty is to do “justice
27 between the parties,” *see Elder v. Holloway*, 984 F.2d 991, 998 (9th Cir. 1993) (Kozinski,
28 J., dissenting from denial of petition for rehearing), not the attorneys. Mattel’s attorneys
may represent the company in litigation, but the Court’s Orders affect Mattel, and the
company should not have to account for its lawyers’ independent conduct.

1 Court's order, submitted unredacted versions of those invoices for review *in camera*.⁵ Mattel
2 has moved to compel the production of those unredacted invoices pursuant to the rule that
3 invoices submitted in support of a request for attorneys' fees "should be redacted *only* to the
4 extent absolutely necessary to protect information covered by the attorney-client privilege or the
5 work-product doctrine." *U.S. v. \$1,379,879.09 Seized From Bank of America*, 374 Fed. Appx.
6 709, at **1 (9th Cir. Mar. 19, 2010) (emphasis in original) (citing *MGIC Indem. Corp. v.*
7 *Weisman*, 803 F.2d 500, 505 (9th Cir. 1986)); see also *Reynolds v. Beneficial Nat. Bank*, 288
8 F.3d 277, 286 (7th Cir. 2002). Mattel's position is legally sound; this Court has recognized that
9 the submission of *in camera* information or argument circumvents the adversarial process.⁶ See
10 Hearing Tr., dated December 20, 2010, Vol. I-B, at 21:8-17. But that concern has been partially
11 alleviated here, because MGA has served Mattel with redacted copies of its attorney invoices
12 that (1) identify the number of hours each attorney dedicated to the case on a monthly basis; and
13 (2) categorize attorney hours between time spent on MGA's affirmative claims and time spent
14 on MGA's defense against Mattel's claims. Further detail could be necessary for Mattel to
15 assess the reasonableness of the fees charged, but Mattel has expressly waived any objection to
16 the "rates" charged by MGA's attorneys or the allocation of time on "particular tasks." Hearing
17

18
19 ⁵ Contrary to Mattel's argument, MGA did not waive the attorney-client privilege
or work product doctrine.

20 ⁶ Despite the Court's admonition, the parties have requested a number of *in*
21 *camera* proceedings over the course of this lawsuit and, particularly, during discovery.
22 For instance, Mattel demanded that its in-house counsel be examined *in camera* about his
23 factual investigation prior to the filing of this lawsuit prior to testifying about that subject
24 in connection with MGA's statute of limitations defense. Mattel also requested that its
25 outside counsel and in-house counsel be subject to *in camera* examination before being
26 exposed to the adversarial process in connection with MGA's claim that Mattel concealed
27 evidence about its market research tactics – conduct that ultimately resulted in a finding
28 of liability against Mattel. MGA likewise requested that its outside and in-house counsel
be subject to *in camera* examination in connection with Mattel's claims that the
company's communications with its lawyers about the withholding of an email chain
were made in furtherance of a crime or a fraud as well as Mattel's claim that MGA
suborned perjury.

1 Tr., dated May 25, 2011, Vol. IV, at 41-42.⁷

2 Mattel argues that it needs to review MGA's unredacted invoices in order to object to the
3 "apportionment" of fees between MGA's defense against Mattel's claim for copyright
4 infringement and MGA's defense against Mattel's other claims. But information relevant to
5 apportionment, including legal strategy and the results of witness interviews, is covered by the
6 attorney-client privilege and work product doctrine. *Weisman*, 803 F.2d at 505; *Federal Savings*
7 *and Loan Ins. Corp. v. Ferm*, 909 F.2d 372 (9th Cir. 1990) (noting that *in camera* review of
8 attorney invoices was necessary to protect "the confidentiality of Ferm's communications with
9 her counsel and her counsel's mental impressions concerning litigation strategy"); *In Re Grand*
10 *Jury Witness*, 695 F.2d 359 (9th Cir. 1982) ("[C]orrespondence between attorney and client
11 which reveals the client's motivation for creation of the relationship or possible litigation
12 strategy ought to be protected. Similarly, bills, ledgers, statements, time records and the like
13 which also reveal the nature of the services provided, such as researching particular areas of law,
14 also should fall within the privilege."). Mattel already has information about MGA's monthly
15 bills and its attorneys' allocation of time between affirmative and defensive claims. The risk of
16 disclosing specific information about seven years of MGA's legal strategy is particularly
17 concerning in this case, since both parties are involved in several lawsuits, including a lawsuit
18 against each other in this Court. If the parties were no longer engaged in litigation or if Mattel
19 agreed to some reciprocal production of its own attorney invoices, the Court might have lent
20 greater credence to Mattel's claimed due process concern. But granting this demand for
21 additional transparency, despite the absence of any objection to the hourly rates and time
22 allocation by MGA's attorneys, gives Mattel a one-way view into the litigation strategy of a

24 ⁷ Mattel has opposed the production of its own billing records by noting its lack of
25 objection to the reasonableness of MGA's fees. Had Mattel so objected, its own billing
26 records may have been relevant. See M. Derfner & A. Wolf, *Court-Awarded Attorney*
27 *Fees* ¶ 16.02[8][a] at 16-46 (2010 ed.) ("[T]he vehemence or tenacity of the opposition
28 justifies an increase in the amount of time an attorney must necessarily – and therefore
reasonably – spend in countering the opposition and winning the suit. Similarly, the skill
of an opposing counsel may justify the expenditure of a greater amount of time in
litigation than would ordinarily be reasonable.").

1 party that it continues to battle with in other cases.

2 2. Relatedness

3 MGA is entitled to recover the fees it incurred in defending against claims that
4 “involve[d] a common core of facts or [were] based on related legal theories.” *The Traditional*
5 *Cat Ass’n v. Gilbreath*, 340 F.3d 829, 833 (9th Cir. 2003); *see also Thomas v. City of Tacoma*,
6 410 F.3d 644, 649 (9th Cir. 2005). That test has been imported from the federal civil rights
7 context, in which a prevailing plaintiff is entitled to recover its reasonable attorney’s fees.
8 *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933 (1983). In *Hensley*, the Supreme Court
9 noted that the calculation of “reasonable attorney’s fees” involves (1) multiplying the number of
10 hours “reasonably expended on the litigation” with a reasonable hourly rate; (2) the
11 interrelatedness of the claims; (3) the extent of the plaintiff’s success; and (4) other equitable
12 factors, including those identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714,
13 717-19 (5th Cir. 1974). 461 U.S. at 434-37. On the other hand, fees incurred defending against
14 unrelated claims are not recoverable because time spent on the prosecution of those claims
15 cannot “be deemed to have been ‘expended in pursuit of the ultimate result achieved.’” *Id.*

16 Contrary to Mattel’s argument, the Supreme Court’s recent decision in *Fox v. Vice* does
17 not undermine *Hensley*. In *Fox*, a successful civil rights defendant applied for its reasonable
18 attorneys’ fees contending, as a § 1988 defendant must, that the plaintiff’s claim was
19 “frivolous.”⁸ The plaintiff responded that frivolousness requires that *every* claim be frivolous,
20 but the Court disagreed, citing *Hensley* for the proposition that “a court may reimburse a
21 defendant for costs under § 1988 even if a plaintiff’s suit is not wholly frivolous.” 131 S.Ct.

22 ⁸ Unlike copyright law’s “evenhanded” approach that evaluates attorney’s fee
23 applications brought by prevailing plaintiffs and defendants under the same test, *Fogerty*,
24 510 U.S. at 534, § 1988 plaintiffs and defendants are treated differently in light of the
25 statute’s obvious interest in vindicating civil rights. Section 1988 plaintiffs need only
26 demonstrate that they prevailed, *i.e.*, that “succeed on any significant issue in litigation
27 which achieves some of the benefit the parties sought in bringing suit,” *Hensley*, 461 U.S.
28 at 433 (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978), but
defendants must demonstrate that the action was “frivolous, unreasonable, or without
foundation.” *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 421, 98 S.Ct. 694
(1978).

1 2205, 2214.(2011). If “a plaintiff [] prevail[s] on one contention in a suit while also asserting an
2 unrelated frivolous claim[,] a court could probably award fees to *both* parties.” *Id.* (emphasis
3 added) (citing *Hensley*, 461 U.S. at 435 n. 10). However, the Court held, just as the statute’s
4 interest in deterring frivolous claims entitles a defendant to recover fees incurred defending
5 against such claims, it also limits recovery to amounts the defendant “would not have paid but
6 for the frivolous claims.” 131 S.Ct. at 2215. If the defendant would have incurred those fees
7 anyway, “he has suffered no incremental harm from the frivolous claim” and “has never
8 shouldered the burden that Congress, in enacting § 1988, wanted to relieve.” *Id.*

9 Mattel reads *Fox*’s second holding to require that “fees incurred for defense of related
10 claims that would have been incurred by MGA in the absence of the copyright claim are not
11 recoverable” because “frivolousness and objective unreasonableness [are] factors the Court
12 should consider in awarding fees under the Copyright Act” and in the context of federal civil
13 rights claims, fees incurred for non-frivolous related claims are not recoverable. Docket 10644
14 at ¶ 15. This syllogism misreads the controlling standard for the recovery of fees by copyright
15 defendants, flips *Fox*’s reasoning on its head, promotes absurd outcomes, and, even if correct,
16 does not undermine MGA’s entitlement to its fees. “Reasonableness” may affect defendants’
17 recovery of fees in both the federal civil rights and copyright contexts, but for different reasons.

18 An interest in compensation drives fee awards to civil rights defendants. *Fox*, 131 S.Ct.
19 at 2215 (“[T]he relevant purpose of § 1988 is to relieve defendants of the burdens associated
20 with fending off frivolous litigation.”). Federal civil rights statutes, like the one considered in
21 *Fox*, are mechanisms to safeguard and expand liberties and promote broad compliance with the
22 law. See *Christianburg Garment Co. v. Equal Employment Opportunity Comm’n*, 434 U.S. 412,
23 418-19 (1978) (citing *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 401-02, 88 S.Ct. 964
24 (1968)). Plaintiffs that bring civil rights claims therefore resemble “private attorneys general,”
25 helping vindicate “polic[ies] that Congress considered of the highest priority.” *Id.* Both because
26 plaintiffs’ successful prosecutions of federal civil rights claims serve an important public
27 benefit, and because “violat[ions] of federal [civil rights] law” must be vigorously deterred, a
28 prevailing civil rights plaintiff “should ordinarily recover an attorney’s fee unless special

1 circumstances would render such an award unjust.” *Newman*, 390 U.S. at 417 (Title II); *see also*
2 *Christianburg*, 434 U.S. at 417 (Title VII); *Fox*, 131 S.Ct. at 2213. Since successful civil rights
3 defendants rarely vindicate the same “important public benefits” and civil rights plaintiffs can
4 hardly be considered “violator[s] of federal law,” civil rights defendants do not enjoy the same
5 presumption in favor of fee recovery. *Christianburg*, 434 U.S. at 418-19. Instead, defendants’
6 entitlement to fees rests on “different equitable considerations,” namely the interest in preserving
7 the integrity of the “adversary judicial process” that must “ultimately effectuat[e]” Congress’
8 policies, *id.* at 419, and compensating defendants for “shoulder[ing] the burden” of defeating the
9 “frivolous [or] unreasonable” claims that undermine that process. *Fox*, 131 S.Ct. at 2215; *see*
10 *also Christianburg*, 434 U.S. at 420-21 (discussing legislative history). Of course, no burden
11 has been “shouldered” and no compensation is necessary if the defendant would have incurred
12 its fees anyway, *Fox*, 131 S.Ct. at 2215.

13 Fee awards to copyright defendants serve a purpose loftier than mere compensation:
14 rewarding a successful defense that “enrich[es] the general public through access to creative
15 works.” *Fogerty*, 510 U.S. at 527. The rationales that underlie copyright law favor limitation.
16 Defendants play an important role in “demarc[at]ing” the “boundaries of copyright law” by
17 raising defenses predicated upon public access to creative works and the novel expression of
18 ideas. *Id.* Defendants should accordingly be “encouraged to litigate [meritorious copyright
19 defenses] to the same extent that plaintiffs are encouraged to litigate meritorious claims of
20 infringement.” *Id.* Unlike the narrow compensatory principles that limit recovery to civil rights
21 defendants in cases involving frivolous claims, *see Fox*, 131 S.Ct. at 2215, society’s interest in
22 the assertion of meritorious defenses against *both* reasonable and unreasonable copyright claims
23 is best achieved through the award of all fees incurred in connection with the claim and related
24 “claims [that] involve a common core of facts or . . . legal theories.” *Hensley*, 461 U.S. at 435.
25 That is the standard that has been applied to civil rights plaintiffs, *see Fox*, 131 S.Ct. at 2214,
26 copyright plaintiffs, *Marsu, B.V. v. Walt Disney Co.*, 185 F.3d 932, 939 (9th Cir. 1999) (applying
27 *Hensley*’s relatedness standard to contract fee provision), and copyright defendants, *see*
28 *Twentieth Century Fox Film Corp. v. Entm’t Distributing*, 429 F.3d 869, 884 (9th Cir. 2005).

1. Indeed, Mattel concedes that *Fox* does not affect copyright plaintiffs’ entitlement to fees
2. incurred in prosecuting “related claims.” Reading *Fox* to nevertheless preclude copyright
3. defendants from recovering fees spent defending against related claims runs afoul of the rule that
4. courts should apply the same standards in awarding fees to copyright plaintiffs and copyright
5. defendants. See *Fogerty*, 510 U.S. at 527.

6. In any event, *Fox* acknowledged that “the ‘but-for’ standard . . . may in some cases allow
7. compensation to a defendant for attorney work relating to both frivolous and non-frivolous
8. claims.” 131 S.Ct. at 2216. If the “frivolous” claim implicated greater “monetary exposure” or
9. “involved a specialized area that reasonably caused [defendant] to hire more expensive counsel,”
10. a court could find that the “costs would not have been incurred in the absence of the frivolous
11. allegation.” *Id.* Such is the case here. Mattel sought expansive legal and equitable relief
12. through its claim for copyright infringement. The parties’ attorneys dedicated significant
13. resources to that claim as a result, recognizing its potential to enrich Mattel and destroy MGA.

14. Though the Court, for reasons discussed below, still attempts to apportion fees to the
15. extent practicable, *Fox* does not compel a denial of fees. The specter of billion dollar relief
16. spurred the vast majority of MGA’s legal expenditures and motivated the parties’ commitment to
17. litigate the remaining claims. The Court accordingly awards MGA the reasonable attorneys’
18. fees it incurred in defending against the copyright claim and all related claims.

19. 3. Pre-Filing Costs

20. MGA is also entitled to recover a modest amount of the fees incurred after the filing of
21. Mattel’s lawsuit but before the filing of Mattel’s copyright infringement counterclaim.
22. Prevailing plaintiffs are permitted to recover fees incurred for essential pre-filing activity, see
23. *Webb v. Bd. of Educ. of Dyer County, Tenn.*, 471 U.S. 234, 243, 105 S.Ct. 1923, and
24. evenhandedness demands that defendants similarly recover fees incurred in the preparation of
25. their defense against an imminent claim. See *Fogerty*, 510 U.S. at 527. Mattel sought discovery
26. relevant to its copyright infringement claim before formally moving for leave to assert that claim
27. in an amended pleading. In response to Mattel’s requests, MGA performed extensive factual
28. investigation, retrieved physical evidence, researched the law on copyrights, and prepared

1 witnesses to respond to Mattel’s questions about substantial similarity and access during
2 depositions. It is equitable to reimburse MGA for some of this work not just because MGA’s
3 early efforts may have directly contributed to its eventual success, but also because Mattel did
4 not limit its discovery requests prior to the formal filing of its claim for copyright infringement.

5 4. Discussion

6 All but four of Mattel’s claims arose out of the reproduction of the Bratz concept sketches
7 and sculptures. See Fourth Amended Answer and Counterclaims ¶¶ 124(f) (first counterclaim); 129
8 (second counterclaim); 146 (fourth counterclaim); 154 (fifth counterclaim); 161-62 (sixth
9 counterclaim); 168 (seventh counterclaim); 176 (eighth counterclaim); 181 (ninth counterclaim);
10 187 (tenth counterclaim); 194 (eleventh counterclaim); 203 (twelfth counterclaim); 240
11 (seventeenth claim); see also Memo. in Support of Mot. to Confirm Pendency [Docket 7801] at
12 2:7-9 (arguing that “Mattel’s Bratz-related trade secret claim . . . has long been at issue.”).
13 Mattel’s thirteenth, fourteenth, fifteenth, and sixteenth counterclaims, which did not survive
14 MGA’s motion to dismiss, concerned conduct unrelated to Mattel’s copyright infringement
15 counterclaim and the Court accordingly excludes from the attorneys’ fees award amounts
16 incurred in defense of those allegations.

17 Some of these claims also encompassed other conduct, including the alleged
18 misappropriation of Mattel documents using other Mattel employees (a claim the jury rejected).
19 MGA argues that it is entitled to recover the fees it incurred defending against these allegations
20 because the claims are related – an argument that hews to the legal rule while betraying its
21 origins. *Hensley*’s rule ensures that courts do not become bogged down in a “second major
22 litigation” about the “determination of fees.” *Fox*, 131 S.Ct. at 2216 (quoting *Hensley*, 461 U.S.
23 at 437). If two claims “involve a common core of facts” or a single “legal theory” supports a
24 claim to relief arising out of two sets of facts, then one would expect “[m]uch of counsel’s time
25 will be devoted generally to the litigation as a whole, making it difficult to divide the hours
26 expended on a claim-by-claim basis” or, in the case of a single claim, on an allegation-by-
27 allegation basis. *Hensley*, 461 U.S. at 435. For instance, MGA’s attorneys spent thousands of
28 hours performing routine tasks in connection with the filing of dispositive motions, and

1 allocating out time spent on allegations concerning the Bratz works represents a futile and
2 wasteful use of judicial resources, especially since counsel's diligence was more likely
3 motivated by an attempt to defeat Mattel's Bratz-related allegations, and not Mattel's claim that
4 a few employees downloaded company documents. *Fox*, 131 S.Ct. at 2216.

5 The Court has nevertheless attempted to exclude attorneys' fees and costs incurred
6 investigating these other allegations of wrongdoing. The Supreme Court has recognized that
7 "rough justice" is sufficient in the context of fee awards, but justice is still required. Though
8 MGA's billing records are voluminous, the attorneys hired after December 2007 specifically
9 identified the tasks they performed, and thereby enabled the Court to easily separate out time
10 spent on unrelated tasks. Based on these records, the Court estimates that MGA incurred \$24
11 million in fees for the factual or legal investigation of allegations that did not overlap with the
12 alleged reproduction of the Bratz concept sketches and sculptures, and excludes that amount from
13 the total fee award. Mattel does not dispute that the total sum incurred by MGA in defense of
14 Mattel's claims totals \$129,688,073. *See* Declaration of Stephen Schultz In Support of MGA's
15 Motion for Attorneys' Fees ¶ 17. Deducting \$24 million in fees unrelated to the copyright claim
16 results in a total fee award of \$105,688,073.

17 5. Other Costs

18 MGA also claims to have incurred approximately \$40 million in costs over the life of this
19 litigation. That amount must also be reduced, so as to exclude costs unrelated to the copyright
20 claim, including costs for outside investigators (\$87,807), approximately \$7000 in costs for
21 deposition recording services, branding research (\$509,806), and a study performed in
22 connection with MGA's affirmative claims (\$128,800). Recoverable costs do, of course, include
23 the modest fees paid to Mr. Glenn Vilppu for his copyright specific expert opinion and other
24 general trial costs incurred over the life of this litigation. Subject to these deductions, MGA's
25 recoverable costs amount to \$31,667,104.

26 **III. Disposition**

27 A fee award is appropriate if a successful defense furthers the purposes of the Copyright
28 Act. Mattel asserted a copyright claim that was stunning in scope and unreasonable in the relief

1 it requested. The claim imperiled free expression, competition, and the only serious competitor
2 Mattel had faced in the fashion doll market in nearly 50 years. MGA's successful defense
3 ensured that well-resourced plaintiffs cannot bend the law to suit their pecuniary interests. For
4 these reasons, and pursuant to 17 U.S.C. § 505, the Court awards MGA \$105,688,073.00 in
5 attorneys' fees and \$31,677,104.00 in costs.⁹

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8 IT IS SO ORDERED.

9 DATED: August 4, 2011

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11 
12 **FOR PUBLIC RELEASE**

13 DAVID O. CARTER
14 United States District Judge
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24 ⁹ MGA's *ex parte* Application to Compel Production of Evidence in Connection
25 with the Hearing on Motions for Attorneys' Fees [Docket 10574] is DENIED. Mattel's
26 Motion to Compel MGA Entertainment, Inc. and Mr. Machado to Produce Attorney
27 Billing Records [Docket 10676] is DENIED. Mattel's Motion to Compel the Production
28 of the Declaration of Stephen Schultz [Docket 10634] is STRICKEN AS MOOT, in light
of MGA's withdrawal of its request to submit that Declaration to the Court, *see* Docket
10682. Mattel's Motion to Compel Production of, or Strike, Cost Materials and
Additional Cost Invoices [Docket 10672] is DENIED.

COPY

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8 BULLIS CHARTER SCHOOL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA

11
12 BULLIS CHARTER SCHOOL,
13 Petitioner,

14 v.

15 LOS ALTOS SCHOOL DISTRICT; BOARD OF
16 TRUSTEES OF THE LOS ALTOS SCHOOL
DISTRICT; and TIM JUSTUS, in his capacity as
17 District Superintendent,
18 Respondents.

CASE NO. 109CV144569

SUPPLEMENTAL
DECLARATION OF ARTURO J.
GONZÁLEZ IN SUPPORT OF
BULLIS CHARTER SCHOOL'S
MOTION FOR ATTORNEYS'
FEES

Date: December 12, 2013
Time: 9:00 a.m.
Dept: 5

The Honorable Carol Overton

Petition Filed: June 10, 2009

(ENDORSED)
FILED
OCT 18 2013
DAVID H. YAMABAKI
County Clerk
Superior Court of CA County of Santa Clara
BY _____

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1 I, Arturo J. González, declare as follows:

2 1. I am Co-Chair of the Litigation Department at Morrison & Foerster LLP, counsel
3 for Petitioner Bullis Charter School in this action. I am licensed to practice law in the United
4 States Supreme Court, the United States Court of Appeals for the Ninth Circuit, and all state and
5 federal courts in California. I have personal knowledge of the facts stated herein and could testify
6 competently to them if called upon to do so.

7 2. This declaration supplements my declaration filed on August 10, 2012 (Dkt. No.
8 190). Like this declaration, my August 10, 2012 declaration was filed in support of Bullis’
9 Motion for Attorneys’ Fees under section 1021.5 of the Code of Civil Procedure (Dkt. No. 189).
10 Although the motion – and Bullis’ supporting memorandum – was filed over a year ago, the
11 parties have not yet completing briefing. This updates my August 10, 2012 declaration, and, as
12 discussed below, attaches legal bills since August 2012 for our work responding to the District’s
13 substantial discovery that the District claims was necessary to respond to Bullis’ motion for legal
14 fees. Together with this declaration, we are filing an amended notice of our motion as well as a
15 supplemental Declaration of Jed Wallace (Mr. Wallace also filed a declaration on August 10,
16 2012 (Dkt No. 191)). Because our memorandum of points and authorities (Dkt. No. 190) has not
17 changed, we rely on our August 10, 2012 filing.¹

18 3. Bullis Charter School (“Bullis”) retained Morrison & Foerster in 2008, when it
19 was sued (as real party in interest) by the Los Altos School District (the “District”) regarding its
20 County-approved admissions policy. Bullis prevailed. I have represented Bullis since, and began
21 work as lead counsel on this engagement in early 2009.

22 **LEGAL EXPERIENCE**

23 4. In evaluating a fee request, one of the things courts consider is the experience and
24 background of the lawyers who did the work. I am a trial lawyer. I graduated from Harvard Law
25 School in 1985, began working as an associate at Morrison & Foerster in September of 1985, and

26 _____
27 ¹ We note that the citations to the González Declaration in Bullis’ memorandum refer to
28 my original, August 10, 2012, declaration.

1 became a partner in 1992. I am an Associate with the American Board of Trial Advocates, an
2 organization that requires the equivalent of 20 civil jury trials for consideration. I have
3 successfully defended three trials where my client was a defendant sued in each case for more
4 than \$1 billion. I have also obtained four verdicts for plaintiffs that were each in excess of \$10
5 million. I have tried cases in a variety of complex substantive areas, including seven civil rights
6 cases to verdict and cases involving trade secrets, the Lanham Act, copyright, fraud, contract
7 disputes, unfair business practices, legal and medical malpractice, race and sex discrimination, tax
8 matters, and criminal law.

9 5. I have worked on many matters affecting the public interest and public education
10 throughout my career, including *Butt v. State of California* (1992) 4 Cal.4th 668, one of
11 California's most important public school decisions, which I argued in the California Supreme
12 Court. That case held that a premature closure of public schools would violate a child's
13 fundamental right to a public education. I served as lead counsel for plaintiffs, representing
14 public school parents and their children who resided in the district.

15 6. I also have significant appellate experience. I have argued cases before the
16 California Supreme Court, the First, Third, and Sixth District California Courts of Appeal, and
17 the Ninth Circuit.

18 7. I have received a number of awards and acknowledgements for my legal work. In
19 2009, I was recognized by the *National Law Journal's* "Winning" Special Report as one of the
20 top 10 trial lawyers in the United States. From 2010-2013, I was selected as one of the country's
21 top trial lawyers by *Legal 500 US*, which described me as "incredibly impressive on his feet" and
22 "a great leader." From 2006-2012, I was named by the *California Daily Journal* as one of
23 California's Top 100 leading lawyers, and was recommended as a leading lawyer by *Best*
24 *Lawyers in America* in 2011 and 2012. In 2008, I was selected by *The National Law Journal*
25 among the "50 Most Influential Minority Lawyers in America," by *Hispanic Business* as one of
26 the 100 most influential Latinos in the United States, and by *Lawdragon* as one of the 500
27 Leading Lawyers in America. In 2003, the *American Lawyer* magazine selected me as one of the
28 nation's top 45 lawyers under the age of 45, and in 1995, the *National Law Journal* selected me

1 as one of the nation's top 40 lawyers under the age of 40. In addition, in 1991, *California Law*
2 *Business* selected me as one of the top 20 young lawyers in California. I have also been named as
3 a leading litigation attorney in California by *Chambers USA*.

4 8. I have served as Co-Chair of Morrison & Foerster's Litigation Department since
5 2010; prior to assuming that role, I served as Chair of the firm's Trial Practice Group. In these
6 roles, and during the course of my 28-year legal career, I have been active in teaching other
7 lawyers. I have chaired panel presentations on behalf of the Practising Law Institute ("PLI") and
8 have served on more than twenty panels for the California Continuing Education of the Bar
9 ("CEB") in different substantive areas. This past August, I was Chairperson for a new PLI
10 Program on trial skills entitled "California Trial Advocacy." I moderated one of the panels,
11 entitled "Preparing Your Case for Trial." I have served on six panels on The Effective Delivery
12 of Opening Statements and Closing Arguments (and was moderator for two of those panels), and
13 have also served on panels regarding preparing cases for trial, motion practice, recent
14 developments in the law, expert witnesses, courtroom technology, and discovery issues. I have
15 also made a presentation on professional malpractice, and have taught lawyers the effective way
16 to take depositions. I have lectured to over 3,000 lawyers throughout California. In addition, I
17 have made a presentation to lawyers in Puerto Rico on trial preparation, including the effective
18 use of videotaped depositions at trial.

19 9. I am also active in bar activities. In 2010, I served as the President of the Bar
20 Association of San Francisco.

21 10. I have received awards for my legal work from a number of organizations,
22 including the Alameda County Board of Education, which awarded me with a Public Education
23 Service Award for representing the public high school students of California in a challenge to the
24 High School Exit Exam. I have also received commendations from the California State Senate
25 and the California State Assembly. I have been honored by the League of United Latin-American
26 Cities, the Mexican-American Political Association, La Raza Centro Legal, and the San
27 Francisco, East Bay, and Fresno La Raza Lawyers' Associations. Numerous public interest
28 organizations have recognized me for my work affecting the public interest.

1 **THIS LITIGATION**

2 11. In early 2009, Bullis engaged Morrison & Foerster to analyze the legality of the
3 District's facilities offer and methodology. Prior to filing this lawsuit, we conducted an extensive
4 analysis of the District's facilities offer, informed the District of all of the ways in which it was
5 deficient, and asked the District to correct those deficiencies. We hoped that through open
6 dialogue and negotiation, we could avoid litigation. But the District refused to address the issues
7 Bullis identified. We had no choice but to file a lawsuit, which we did in June 2009.

8 12. This case has been vigorously litigated for over four years. It was not an easy case
9 to win. The District has hired multiple law firms to fight Bullis, including the international law
10 firm of Reed Smith. In addition, multiple parties have filed multiple amici briefs that we have
11 had to address, both in the appellate and trial courts.

12 **THE DISTRICT'S INACCURATE MEASUREMENTS**

13 13. From the beginning of this engagement, and throughout the litigation, Bullis' job
14 was particularly difficult due to the numerous steps that the District took that made it difficult to
15 compare the facilities at comparison group schools and those offered to Bullis. For example:

- 16
- The District knowingly used – and filed with the Court – old site plans that
17 overstated the amount of space offered to Bullis. Attached as **Exhibit A** to my
18 original (August 10, 2012) declaration is a true and correct copy of a
19 declaration (with relevant exhibits only) detailing the District's filing of a
20 declaration from their architect that contained inaccurate measurements of
21 Bullis. Exhibit A was filed on October 26, 2009, in support of Bullis' petition.
22 (See Dkt. No. 77.) Even though the District admitted that the map was wrong,
23 and although the Court of Appeal noted the District's use of the erroneous map
24 and figures, the District continued to use the same outdated map. (See
25 Supplemental Declaration of Andrea Eyring In Support of Bullis' Motion to
26 Compel Compliance, Dkt. No. 180, ¶¶ 10-11; *Bullis Charter School v. Los*
27 *Altos School District* (2011) 200 Cal.App.4th 1022, 1057, fn. 24 (*Bullis*).)

- 1 • The District failed to identify which physical space on each campus it
2 considered in its Proposition 39 analysis, despite Bullis' pre-litigation requests
3 that the District explain the discrepancy between the total site size of each
4 campus and the amount of space reported in the District's Proposition 39
5 analysis. Instead of identifying which space it did and did not count, the
6 District forced Bullis to painstakingly walk the District's Assistant
7 Superintendent Randy Kenyon through numerous numbered photographs of
8 each school in deposition to determine what the District did and did not count.
9 (*Bullis, supra*, 200 Cal.App. 4th at p. 1045.)
- 10 • The District mis-reported actual size of numerous facilities at the comparison
11 group schools, by using "standard room sizes." These were measurements that
12 were not tied to actual (or even average) size of the real facilities. Despite
13 Bullis' multiple requests, the District refused to explain to Bullis how it arrived
14 at its "standard" measurements. Instead, to confirm whether "standard"
15 measurements were accurate, Bullis had to take its own measurements of
16 comparison group schools and conduct detailed analysis of voluminous site
17 maps. It found that the "standard" measurements were wrong. Only then did
18 Mr. Kenyon admit, in deposition, that standard room sizes were invented by
19 the District. (*Bullis, supra*, 200 Cal.App. 4th at pp. 1060-1061.)
- 20 • The District counted space at Bullis underneath buildings as "blacktop play
21 space" while also counting the buildings as indoor space, and changed its view
22 of what counted as "blacktop" or "turf" at comparison group schools to make
23 them appear smaller. (*Bullis, supra*, 200 Cal.App. 4th at pp. 1044-1046.)
- 24 • The District used inconsistent and shrinking measurements to represent certain
25 areas at comparison group schools, despite the fact that there had been no
26 changes to the configurations or sizes of the comparison group schools.
27 (*Bullis, supra*, 200 Cal.App. 4th at p. 1046.)
28

- 1 • The District failed to accurately report (and in some cases, failed to even
2 measure) site size. (*Bullis, supra*, 200 Cal.App. 4th at pp. 1050-1052.) Bullis
3 had to engage various individuals – including an aerial photographer, engineer,
4 and architect/designer – to obtain measurements that the District refused to
5 provide.
- 6 • The District failed to report the amount of space per student at comparison
7 group schools. (*Bullis, supra*, 200 Cal.App. 4th at pp. 1050, 1055.) Bullis had
8 to reverse engineer these calculations.
- 9 • The District failed to specify the sharing arrangements that would restrict
10 Bullis’ use of the facilities offered, and counted restricted use space as if it had
11 been offered on a 100% basis. (*Bullis, supra*, 200 Cal.App. 4th at p. 1059.)
- 12 • The District withheld building and site plans from Bullis, despite multiple
13 requests (including requests before litigation began), forcing us to go to the
14 Division of State Architect to obtain these plans. This took us, and DSA,
15 significant time and effort. When the District finally allowed us to inspect site
16 plans, months later (and well into litigation), they first directed us to old
17 building and site plans that were clearly irrelevant. Only after considerable
18 pressure did the District drive us to a completely different location where the
19 relevant documents were stored.

20 14. In order to demonstrate and explain the District’s improper methodology and
21 allocation, we had to spend significant amounts of time reverse engineering and cross-checking
22 the District’s process:

- 23 • We reviewed volumes of historical documents, including, among others, all
24 documents related to each Proposition 39 offer since Bullis’ inception, District
25 budget reports for accurate total site size measurements, demographer’s
26 reports, District Board minutes, and documents submitted by the District to
27 Facilities Planning Division of the Department of Education.

28

- 1 • We noticed and took the deposition of various District administrators and
2 agents, including Mr. Kenyon (to find the truth about what he did and did not
3 consider in his Proposition 39 analysis and accurate site measurements, among
4 other things) and the District's architect, Lawrence Schadt (to determine
5 whether accurate maps were used to take measurements and what he was
6 instructed to exclude from his measurements).
- 7 • We engaged various subject matter experts to, among other things, take aerial
8 photographs, create Auto-CAD files, and determine site size measurements.

9 15. Despite these difficulties, Bullis' efforts have resulted in a published opinion that
10 will benefit charter school students throughout the state. (See Declaration of J. Wallace
11 ("Wallace Dec."), filed on August 10, 2012 (see Dkt. No 191); see also Supplemental Declaration
12 of J. Wallace ("Supp. Wallace Dec."), filed concurrently herewith.)

13 MY CUSTOMARY HOURLY RATE

14 16. One of the factors that courts consider in determining a reasonable hourly rate is
15 the customary rate that is charged by the attorney. In 2009, my customary billing rate was \$750
16 per hour. In 2010, my customary billing rate was \$795. In 2011, my customary billing rate was
17 \$835. My 2012 customary billing rate was \$875. Early in 2012, I tried a case in the Southern
18 District of New York where I billed the client \$875 an hour for my time. My current customary
19 billing rate is \$950.

20 17. Bullis received a 5% discount off of all of our hourly rates from the beginning of
21 this engagement through the end of 2012. The District's tactics (further discussed below) have
22 caused me significant concern about the cost of this litigation. In an effort to stem those costs, I
23 have followed a strict "push work down" to associates policy (also discussed below). I have also
24 increased the discount that the firm has given the client on this engagement. For example, in late
25 2012, the associate discount increased to 10%, and in January 2013, this discount was applied to
26 all timekeepers (including me). In March 2013, we increased the Bullis discount to 15% for
27 associates and legal assistants.

28

1 18. In 2009, my hourly rate to Bullis was \$712.50, in 2010 - \$755.25, in 2011 -
2 \$793.25, in 2012, - \$831.25, and in 2013, it is \$855.

3 **TRIAL COURT PREPARATION AND PROCEEDINGS**

4 19. Preparing to file this case, and briefing in preparation for the hearing on Bullis’
5 petition, was extremely difficult and time-intensive. That was due, in large part, to the District’s
6 failure to properly account for all space at its schools, overstating the amount of space it had
7 allocated to Bullis, and constantly changing factual assertions and legal arguments. Repeatedly
8 during the course of this litigation, the District’s factual and legal positions have changed. For
9 example, the District has frequently changed its measurements of the comparison group
10 campuses. At one point, the District filed a declaration from its architect with this Court that the
11 District’s lawyers knew contained false statements. We discussed this in detail in the Opening
12 Brief in the Court of Appeal. The relevant pages of that discussion are attached as **Exhibit B** to
13 my original (August 10, 2012) declaration.

14 20. As a result, we have had to reverse engineer almost all of the District’s Proposition
15 39 analysis, and upon discovery of numerous and significant errors, take extensive measurements
16 of each comparison group school – indoor and outdoor space, as well as overall site size – and the
17 space allocated to Bullis. Approximately 14 depositions were taken of parties and non-parties,
18 though Bullis only took 5.

19 21. The Court of Appeal commented on many of these discrepancies in its opinion.
20 For example, the Court noted that “large amounts (*over 50 percent*) of exterior square footage
21 were not included in the District’s calculations.” (*Bullis, supra*, 200 Cal.App.4th at p. 1044,
22 emphasis in original.) The Court also noted that Randy Kenyon, the District’s Assistant
23 Superintendent, had failed to count picnic tables, walkways, lunch areas, childcare areas,
24 playgrounds, blacktop, and other space at the comparison group schools. (*Id.* at p. 1045.) The
25 Court also noted that Kenyon instructed the architect to only measure certain specified areas and
26 “not anything else.” (*Id.* at p. 1046, fn. 15.) Significantly, the Court noted that there was
27 “evidence in the record—e.g., failure to consider large amounts of comparison group school
28 space, disregarding site size component, and changing established methods of performing the

1 reasonable equivalence analysis—from which such a finding [of bad faith] could be made.” (*Id.*
2 at p. 1063, fn. 35.)

3 22. In addition, the legal arguments made in the District’s Petition for Review conflict
4 with other legal positions advocated by the District in this Court. Here are just a few notable
5 examples from the briefing before this Court pertaining to the Proposed Judgment:

6 **Site Size.** Bullis’ proposed judgment stated that “[t]he District shall provide Bullis with a
7 site and facilities that are reasonably equivalent to the 10-acre minimum sites enjoyed by
8 comparison schools.” (Amended Proposed Judgment at 1.) The District objected to this
9 language on the ground that “[t]he court of appeal decision does not require provision of a
10 specific size site.” (Respondents’ Objections at 4:6, Dkt. No. 111.) But in the Supreme
11 Court and Court of Appeal the District argued repeatedly that:

12 [Under the Court of Appeal’s opinion,] a district *must* . . . provide a
13 school site of equal size [to the charter school]. (Pet. for Review at
14 15, italics added.)

15 [T]he Opinion transforms site size into an overriding consideration,
16 requiring a district to provide a site of equal size [to the charter
17 school] to those of the comparison school sites. (Pet. for Review at
18 30.)

19 [T]he Court [of Appeal] hails site size as an overriding
20 consideration. (Pet. for Rehearing at 50.)

21 [The Court of Appeal opinion] elevat[es] . . . ‘school site size’ to
22 the primary consideration in the analysis. (Req. for Depublication
23 at 6.)

24 [T]he Opinion elevates site size to *the* overriding factor. (Reply In
25 Support of Pet. for Review at 14.)

26 **Allocation of Facilities.** Bullis’ proposed judgment also stated that “the District shall
27 consider total site size and account for (and allocate reasonably equivalent building and
28 outdoor space to Bullis for) *all* building and outdoor space on any and all comparison
school sites.” (Amended Proposed Judgment at 1.) The District objected on the ground
that “[t]he court of appeal decision says nothing about what the District needs to allocate --
it only opines as to what the District needs to consider.” (Respondents’ Objections at 5,
10.) Compare this to the District’s arguments in prior briefs:

1 [Under the Court of Appeal’s Opinion,] a district *must . . . allocate*
2 ‘equal’ space to the charter school. (Pet. for Review at 15, italics
added.)

3 [U]nder the Opinion, a district *must . . . allocate* each and every
4 category of non-teaching space to a charter school.” (Pet. for
Review at 22-23, italics added.)

5 [A] district *must* count every facility at every comparison school
6 and *provide* each facility to the charter school. (Reply In Support
of Pet. for Review at 13, italics added.)

7 [T]he Opinion indicates that [the] district *must . . . provide*
8 additional space or access, to *another* multi-purpose room to meet
the ‘reasonably equivalent requirement. (Pet. for Review at 32,
italics added.)

9
10 The [Court of Appeal] Opinion . . . finds that a school district must
11 include [in its facilities offer] before- and after-school childcare
facilities if comparison schools also include such facilities. (Pet.
12 for Rehearing at 49; see also Pet. for Review at 33 [same]; Reply In
Support of Pet. for Review at 16 [same].)

13 **Consideration of All Space.** Bullis’ proposed judgment stated that “[t]he District shall,
14 in its reasonable equivalency analysis, disclose and utilize the actual size of building and
15 outdoor space at comparison schools.” (Amended Proposed Judgment at 1.) The District
16 objected because “[t]he court of appeal does not dictate how the District shall document its
17 consideration, Mathematical precision is not required; a fair representation of space
18 may be given in a number of ways.” (Respondents’ Objections at 6.) Likewise, the
19 District objected to measuring all outdoor space, on the ground that “[t]he court of appeal
20 decision does not order the District . . . to measure everything.” (*Id.* at 7.) The District
21 also objected to proposed language requiring the District to provide accurate
22 measurements of the outdoor and building space offered to Bullis, because “[t]he court of
23 appeal decision . . . does not mandate measuring every single space.” (*Id.* at 8.)

24 Again, the District sang a different song in the Supreme Court and Court of Appeal:

25 [T]he Opinion . . . requires a district to measure *all square feet of*
26 *space* which is not considered ‘teaching station space’ or
27 ‘specialized classroom space.’ (Reply In Support of Pet. for
Review at 12, italics added.)

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[T]he [Court of Appeal] Opinion . . . requires *calculations and articulation* of every square inch of space, usable or not. (Pet. for Rehearing at 35, italics added.)

One of the [Court of Appeal] Opinion’s *primary holdings requires* school districts to include every square foot of a parcel on which a school sits in its consideration of a facilities request. (Pet. for Rehearing at 42, italics added.)

[E]very patch of dirt, hillside, space occupied by a cell phone tower or space otherwise essentially unusable to students and staff must be considered in the analysis. (Pet. for Rehearing at 42.)

[A] district must . . . meticulously measure *all* space at each comparison school site, . . . [and] identify every category of space at every comparison school site. (Pet. for Review at 15-16.)

The Opinion . . . concludes a district must count every category of facility at every school site. (Pet. for Review at 29; see also Request for Depublication at 6 [same]; Reply In Support of Pet. for Review at 13 [same].)

[T]he Opinion imposes a requirement of ‘arithmetical precision.’ (Reply In Support of Pet. for Review at 11.)

23. When we appeared before this Court to argue regarding the Proposed Judgment, the District’s lawyers from Reed Smith told this Court (without a clear explanation) to disregard the District’s objections to the Proposed Judgment. Specifically, Ray Cardoza told this Court that that “[y]ou can consider the objections withdrawn.” (A true and correct excerpt from the transcript of this hearing is attached as **Exhibit C** (see 3:10-11) to my original (August 10, 2012) declaration.) However, by that point, I had personally spent a significant amount of time digesting and responding to that brief. At no point prior to Mr. Cardozo making this statement in open court had I been given notice that the District was going to “withdraw” their written objections to the Proposed Judgment.

DELEGATING WORK TO ASSOCIATES AND CLIENTS

24. In order to more efficiently handle this matter, I delegated significant responsibilities to the associate working on this case, including covering nearly all of the depositions, drafting all of the written discovery and submissions to the Court, interviewing witnesses, and handling conferences and negotiations with opposing counsel.

1 25. Suzanna Brickman has been the associate who has assumed primary responsibility
2 for the day-to-day tasks on this case since its inception. Ms. Brickman is a 2006 graduate from
3 Stanford Law School. Prior to associating with Morrison & Foerster, Ms. Brickman completed a
4 one-year fellowship in education law at The Johns Hopkins University. Ms. Brickman has been
5 working with Bullis since 2008, and has worked on this engagement since its inception in 2009.
6 She drafted the petition and most of the briefs, and drafted most of the written discovery and took
7 or defended many of the depositions. In 2009, Ms. Brickman's customary billing rate was \$400;
8 in 2010, it was \$480; in 2011, it was \$570; in 2012, it was \$620; and it is currently \$650. Despite
9 these customary rates, Morrison & Foerster reduced Ms. Brickman's hourly rate as follows: \$380
10 in 2009, \$456 in 2010, \$541.50 in 2011, \$589 in 2012 (in late 2012 this was reduced to \$558),
11 and \$552.50 in 2013. As discussed above, these rates reflect a 5-15% discount.

12 26. In addition to Ms. Brickman, associate Maggie Mayo assisted with this case in
13 April through September 2009. At the time, Ms. Mayo was a first year associate (she is a 2008
14 graduate of the University of California, Berkeley, School of Law) and billed at a customary rate
15 of \$295 (Bullis was billed \$280.25 for her time). Moreover, several summer associates have
16 conducted legal research and analysis on this matter since 2009 (including research related to this
17 motion and the currently pending motion to compel compliance); most of this work has not been
18 billed to the client.

19 27. To further improve efficiency and reduce the number of hours billed by Morrison
20 & Foerster, Bullis Board and committee members have volunteered many hours to case strategy
21 and fact development, as well as negotiations with the District, since the beginning of this
22 litigation. For example, Andrea Eyring, a six-year Bullis Board member who holds a bachelor
23 and master degree in electrical engineering from Brigham Young University, spent many hours
24 on this litigation. Ms. Eyring took extensive measurements of all relevant District campuses –
25 including indoor space, outdoor space, and overall site size. Ms. Eyring also reverse engineered
26 numerous District facilities offers in order to show the District's inconsistent and inaccurate
27 measurements, overstatement of Bullis' measurements, understatement of comparison schools'

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1 measurements, and the otherwise obfuscated discrepancy between Bullis' facilities and those of
2 the comparison group schools.

3 28. Francis La Poll, another Bullis Board member, has also volunteered many hours to
4 this litigation in order to reduce Bullis' fees. Mr. La Poll graduated from Stanford Law School,
5 served as a Ninth Circuit clerk, and is currently an AV-rated lawyer in private practice. Mr. La
6 Poll served as a two-term Mayor of the City of Los Altos. Mr. La Poll was particularly helpful in
7 mediation, where we were able to reach a settlement in principle with the District's negotiating
8 committee.

9 29. I also delegated significant tasks to my law school classmate, David Spector, who
10 has volunteered many hours to this matter. Mr. Spector is a cum laude graduate of Harvard Law
11 School. He has played an integral role in, among other things, analyzing the District's
12 Proposition 39 methodology, formulating legal strategy, and revising briefs. His work saved
13 Bullis thousands of dollars; without Mr. Spector's assistance, I would have spent considerably
14 more time on this matter.

15 30. Several other Bullis Board and committee members have dedicated substantial
16 amounts of time to this litigation. Had I not been able to delegate fact development (among other
17 tasks) to them, both Ms. Brickman and I would have had to spend considerably more time on this
18 engagement. Because Ms. Brickman is also responsible for other matters, I would have likely
19 had to put another associate on this case. This would have increased legal fees, especially given
20 the complex facts of this case and the time it takes to getting up to speed. Moreover, I believe we
21 would have had to retain at least two experts to conduct the work that our clients were delegated.

22 31. I took other measures to ensure that this matter was handled efficiently. For
23 example, Bullis limited the number of depositions it took, and sought expedited briefing on
24 multiple occasions. We also assigned organizational and filings tasks that would ordinarily have
25 been completed by legal assistants to experienced legal secretaries and did not bill for that work.

26 APPELLATE COURT PREPARATION AND PROCEEDINGS

27 32. On appeal, I asked retired Justice Miriam Vogel, who is a Senior Of Counsel at
28 Morrison & Foerster, to assist with briefing. Justice Vogel, a graduate of Whittier Law School,

1 spent eighteen years as a Justice on the California Court of Appeal, Second Appellate District,
2 Division One, and five years as a judge on the Los Angeles Superior Court. Justice Vogel is a
3 member of the California Academy of Appellate Lawyers and serves on the Ninth Circuit
4 Advisory Board. Although Justice Vogel's customary rate was \$765 in 2010, \$800 in 2011, and
5 \$850 in 2012, her hourly rate to Bullis was \$726.75, \$760, and \$807.50, respectively.
6 Ms. Brickman also played a large role in preparing the appellate court filings, as did the Bullis
7 volunteers. Again, for the sake of efficiency, I delegated most of the work regarding the appeal to
8 others.

9 33. Even after the Court of Appeal issued its opinion, we operated with as much
10 efficiency as possible in the face of a concerted effort by the District to set aside the opinion. The
11 District filed three post-appeal briefs: a Petition for Rehearing, Petition for Review, and Reply in
12 Support of Petition for Review. In addition, the District filed a Request for Depublication.
13 Moreover, the California School Boards Association submitted an amicus letter in support of the
14 District's Petition for Review. We successfully opposed the District's efforts to overturn the
15 Court of Appeal's opinion.

16 **POST-APPEAL TRIAL COURT PREPARATION AND PROCEEDINGS**

17 34. When this case was remanded to the trial court following remittitur, we took
18 various steps to expedite post-appeal matters and resolution of the litigation. Bullis appeared ex
19 parte 6 court days after remittitur issued and asked the Court to move forward status conference,
20 sign a proposed judgment, and expedite any briefing on the form of judgment. The parties are
21 continuing to litigate whether the District has complied with the Court's order and writ – that
22 motion is currently on appeal.

23 35. In addition, when Bullis filed this fees motion in August 2012, the District served
24 substantial discovery requests— seeking from Bullis documents and information including: all
25 admission applications Bullis received from 2008-present; Bullis' special education expenses; the
26 occupations of all Bullis parents from 2009 to the present; the average annual income of parents
27 who send their children to Bullis; the net worth of parents who send their children to Bullis;
28 Bullis' recruiting and enrollment materials since 2004; the investment strategy and earnings of the

1 independent and non-party Bullis-Purissima Elementary School Foundation; the Los Altos Hills
2 City Counsel's pursuit of a school site; Bullis' legal committee; a group of volunteer parents who
3 looked for a site for Bullis nearly a decade ago; and Bullis' agreements with non-party vendors;
4 and legal bills from other litigation.

5 36. Since the summer of 2012, the District has served six sets of document requests
6 (84 requests) and five sets of interrogatories (87 interrogatories). Bullis has responded to each,
7 and has produced nearly a thousand pages of documents. In addition, we have engaged in
8 countless hours of meet and confer communications and correspondence.

9 37. In addition to the aforementioned written discovery, the District also took two
10 depositions and served five third party subpoenas, resulting in the production of over 3,200 pages.

11 **SETTLEMENT OF LEGAL FEES AND MEDIATION**

12 38. We have made several attempts to avoid further litigation and settle the issue of
13 legal fees. First, I sent the District a letter in early 2012, offering to settle legal fees for an
14 amount substantially less than the fees actually incurred in the course of this litigation. The
15 District did not respond to the offer.

16 39. Then, in February 2012, Bullis invited the District to mediation with the intent to
17 reach a long-term solution regarding facilities and to settle outstanding litigation issues, including
18 legal fees. We attended numerous mediation sessions with the District. The public details of the
19 mediation with retired Justice Richard J. McAdams are discussed in the Declaration of Ken
20 Moore, filed in support of Bullis' Motion for Compliance. (Dkt. No. 139.) Although the parties
21 reached a tentative agreement that included Bullis' waiver of legal fees, the District subsequently
22 refused to adopt the agreed upon deal terms. (See Exhibits P and Q to the Declaration of Ken
23 Moore in Support of Bullis' Motion for Compliance, Dkt. No. 139.)

24 **IMPACT OF THIS CASE**

25 40. As discussed in the memorandum of points and authorities and Declaration of Jed
26 Wallace (Dkt. Nos. 189, 191) and the Supplemental Declaration of Jed Wallace, filed
27 concurrently herewith, the Court of Appeal's published opinion reaches far beyond just the
28

1 parties and provides critical analysis that will guide school districts and charter schools across the
2 state.

3 41. In addition, the impact of this case is evident in light of the publicity it has
4 received since the Court of Appeal issued its opinion. For example, the lawsuit was the subject of
5 legal alerts on various education-related websites, including the websites of the Charter School
6 Development Center (<http://www.chartercenter.org/resources>, *last visited* Aug. 9, 2012),
7 California Charter Schools Association (“CCSA”) (Wallace Dec. Ex. A at 1-18), Financial Crisis
8 & Management Team Assistance (www.fcmat.org/2012/01/20 and www.fcmat.org/2012/01/24,
9 *last visited* Aug. 9, 2012), and the law firm of Middleton, Young, and Minney
10 ([http://www.mymcharterlaw.com/pdf/Bullis v %20Los Altos School District legal alert 1028](http://www.mymcharterlaw.com/pdf/Bullis%20Los%20Altos%20School%20District%20legal%20alert%201028%20PCM%20final%29.pdf)
11 [11 %28PCM%20final%29.pdf](http://www.mymcharterlaw.com/pdf/Bullis%20Los%20Altos%20School%20District%20legal%20alert%201028%20PCM%20final%29.pdf), *last visited* Aug. 9, 2012). As the CCSA noted, this case
12 represents “[a]n important victory for Prop. 39 statewide This action by the Court lets stand
13 the published decision for use throughout the state.” (Wallace Dec. Ex. A at 7.)

14 42. Attached as **Exhibit D** to my original (August 10, 2012) declaration are excerpts
15 from the District’s post-appeal briefs in the Court of Appeal and Supreme Court. We have
16 highlighted some of the portions of these briefs in which the District concedes that this case is one
17 that affects broad public interests, and one that will have a significant practical impact on school
18 districts.

19 43. Attached as **Exhibit E** to my original (August 10, 2012) declaration is a
20 presentation given by Sue Ann S. Evans of Dannis Woliver Kelley, the law firm that represented
21 the District from the inception of this litigation through the appeal (Ms. Evans was counsel of
22 record until late February 2012, when her firm was substituted by Reed Smith).² In the
23 presentation (which was given on March 29, 2012 at the Small School Districts’ Association
24 Annual Conference), the District’s own lawyer acknowledged the broad impact of this case. (Ex.
25 E at 38 [among other things, noting that under *Bullis* “[a] district must include all square footage

26 _____
27 ² We found this presentation on the Small School Districts’ Association’s website (*last*
28 *visited* Aug. 9, 2012).

1 of comparison school sites when determining the facilities offered” and that the Court of Appeal
2 “[i]n measuring the facilities a district may not count the entire square footage of a facility if the
3 charter school is sharing that facility with a district-operated school”].)

4 44. In addition, the appellate court’s decision in *Bullis* is agendized as a “hot topic” to
5 be discussed at the California Council of School Attorneys 2012 Fall Workshop. A true and
6 correct copy of the webpage describing the 2012 Fall Workshop is attached as **Exhibit F** to my
7 original (August 10, 2012) declaration. “The California Council of School Attorneys (CCSA) is .
8 . . . comprised of attorneys who represent school districts in California. . . . It is affiliated with the
9 California School Boards Association.” (See
10 www.csba.org/LegislationAndLegal/Legal/CaliforniaCouncilOfSchoolAttorneys.aspx, last visited
11 Aug. 7, 2012.) This is the same organization that submitted an amicus letter to the Supreme
12 Court in support of the District’s Petition for Review, and has now filed an application to appear
13 as amicus curiae in the trial court.

14 45. Based on my associate’s research, I understand that the Court of Appeal’s opinion
15 has been subsequently cited in several cases and legal briefs, and is cited in numerous secondary
16 source materials regarding education, mandamus, standard of review, mootness, and agency
17 discretion. Moreover, the lawsuit has also been the subject of press coverage from various news
18 sources, including those outside the immediate Los Altos vicinity. The case was recently cited in
19 a Howard Law Journal Note and Comment calling for a legislative and judicial remedy for
20 inadequate school facilities.

21 HOURS WORKED ON THIS ENGAGEMENT

22 46. Attached as **Exhibit G** to my original (August 10, 2012) declaration is a copy of
23 the hourly billings submitted to Bullis from the beginning of this litigation through July 2012 (the
24 last billing submitted before Bullis filed its fees motion). In my professional judgment, all of the
25 time included in Exhibit G was reasonably necessary to litigate this case successfully on behalf of
26 Bullis.³

27 ³ We have redacted a few entries that disclose privileged information or that concern
28 issues for which we are not seeking fees.

1 47. Attached hereto as Exhibit G-2 is a copy of the hourly billings submitted to Bullis
2 from August 2012 (when Bullis filed its fees motion) through the present. These bills have been
3 redacted to exclude work on matters for which we are not currently seeking fees (e.g. appellate
4 work). In addition, where a particular entry shows that a timekeeper worked on multiple issues,
5 including matters related to this fees motion, we redacted the *entire* entry and are not seeking
6 such fees at this time. Thus, by way of example, in August 2012, Bullis was billed \$176,912.50;
7 however, we are only seeking \$11,290.76. Likewise, in October 2012, Bullis was billed
8 \$76,758.75, but we are only seeking \$1,674 of that amount. And in April 2013, Bullis was billed
9 \$133,931.25; we are only seeking \$23,641.66. In total, Bullis is seeking \$182,252.74 for this
10 firm's work from August 2012 through the end of September 2013.

11 48. In order to further reduce costs, we delegated a significant amount of discovery to
12 our co-counsel at Procopio, Cory, Hargreaves & Savitch LLP. The billings reflecting work co-
13 counsel did relating to fees' motion discovery are attached to the Declaration of John Lemmo,
14 submitted concurrently herewith.

15 **COMPARABLE RATES IN THE SAN FRANCISCO BAY AREA**

16 49. I am a former member of Morrison & Foerster's Board of Directors and participate
17 in weekly meetings of the Firm's Executive and Management Committees. I am generally
18 familiar with the hourly rates charged by comparable law firms in San Francisco, Oakland, and
19 Silicon Valley. Our Firm studies rates charged by comparable law firms to ensure that our rates
20 are competitive. I have also reviewed fee petitions filed by other law firms and have reviewed
21 cases awarding legal fees in other cases. The rates that we are seeking in this fee petition are
22 consistent with what comparable attorneys charge in the Bay Area.

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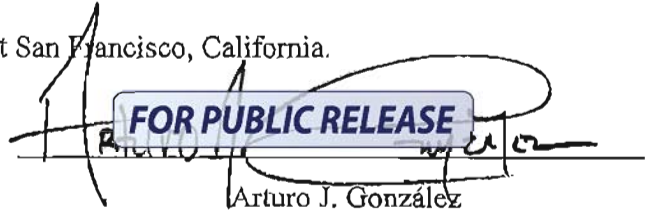
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FEES SOUGHT

50. When we sought fees in August 2012, in addition to the 5% discount Bullis was given, we sought to recover only 95% of the fees it paid to Morrison & Foerster. Accordingly, the District was asked to pay for only 90% of the work done by Bullis' lawyers. As discussed above, the fees we have added since our filing reflect a discount of up to 15%.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of October at San Francisco, California.



FOR PUBLIC RELEASE
Arturo J. González

ORIGINAL

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FILED
LOS ANGELES SUPERIOR COURT

APR 09 2009

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9 Attorneys for PLAINTIFFS Esperanza Rogel,
Gerardo Espinoza, Oscar Leon, Marcos Martinez,
10 Jaime Torres, and California ACORN, Los
Angeles Chapter

11 Additional counsel listed on following page.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13
14 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

15 ESPERANZA ROGEL, *et al.*,

16 PLAINTIFFS,

17 v.

18 REDEVELOPMENT AGENCY OF THE CITY
19 OF LYNWOOD,

20 Defendant.

) Case No. BS106592

)
) **DECLARATION OF WAYNE BARSKY IN**
) **SUPPORT OF PLAINTIFFS' MOTION FOR**
) **ORDER AWARDING ATTORNEYS' FEES**

) Hearing Date: May 1, 2009

) Hearing Time: 9:00 a.m.

) Hearing Place: Dept: 20

) Judge: Hon. Kevin C. Brazile

)
) (Filed Concurrently: Plaintiffs' Motion for
) Award of Attorneys Fees; Memorandum of
) Points and Authorities in Support thereof;
) Supporting Declarations of Wayne Barsky,
) Marcellus McRae, Meghan Blanco, Michael A.
) Brown, Kristy S. Grant, Carol A. Fabrizio,
) Rebecca F. Thornton, Carol A. Sobel, Theresa
) Traber, Shashi Hanuman, Michael Rawson,
) Deborah Collins, Craig Castellagnet, Karen R.
) Growdon, and Cynthia Merrill)

)
) Complaint Filed: December 21, 2006

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DECLARATION OF WAYNE BARSKY

I, Wayne Barsky, declare:

1. I am an attorney, duly licensed to practice law before all courts in the State of California, and I am a partner of the law firm Gibson, Dunn & Crutcher LLP, counsel for Plaintiffs Esperanza Rogel, Gerardo Espinoza, Oscar Leon, Marcos Martinez, and Jaime Torres, and California ACORN, Los Angeles Chapter (collectively "Plaintiffs") in the above-captioned matter. I make this declaration in support of Plaintiffs' Motion for Order Awarding Attorneys' Fees ("Motion"). If called as a witness in the above-reference matter, I could and would testify competently to the following facts, which I know to be true based on my personal knowledge, or which I believe and understand to be true based on my leadership role in this case, my review of documents, and my communications with my colleagues and co-counsel.

Qualifications of Declarant

2. I have supervised this case since it came to our firm in September 2008. I am currently serving as the firm's National Co-Chairman of Intellectual Property Practice Group. I received my law degree from the University of California at Berkeley, Boalt Hall School of Law in 1983, and my Bachelor of Arts from the State University of New York at Binghamton in 1979. I am admitted to practice in California, the District of Columbia and Missouri, and have extensive trial and appellate experience in federal and state court. I frequently lecture at PLI and other professional conferences, have chaired the National Intellectual Property Institute for the Corporate Counsel Institute, and am on the Planning Committee of the USC Intellectual Property Institute. My practice consists almost entirely of complex intellectual property litigation, particularly patent litigation in the federal courts and the U.S. International Trade Commission.

3. I am extensively involved in community and *pro bono* affairs, currently serving as a member of the Executive Committee and Board of Directors of Public Counsel Law Center, the nation's largest *pro bono* law office, where I am also the immediate past Chairman. I have served as a member of the Board of Governors of the Association of Business Trial Lawyers, and as a Judge *Pro Tempore* in the Los Angeles Superior Court system. I received a California State Bar Commendation for my community service and *pro bono* activities some years ago.

1 4. In 2006, I was selected as one of the top 500 trial lawyers in the United States by
2 *LawDragon Magazine*, and in 2009 by the *Los Angeles Daily Journal* and *San Francisco Recorder* as
3 one of the leading intellectual property lawyers in California. I have been named a "Super Lawyer"
4 for each of *Los Angeles* magazine's 2004 through 2009 surveys, have been named in multiple editions
5 of *Who's Who in American Law*, am "Highly Recommended" as an intellectual property specialist in
6 *Global Counsel 3000*, and am profiled as one of the state's top IP specialists in all recent editions of
7 *Chambers USA* and *Legal 500*.

8 Overview of Gibson Dunn's Involvement in Plaintiffs' Litigation

9 5. I was contacted sometime in September by Public Counsel and asked whether my firm
10 would be able to step into a complex *pro bono* case that was headed for trial on a very quick
11 schedule. My understanding was that, although O'Melveny & Myers was originally lead counsel, for
12 a variety of reasons they were unable to continue in that role. After determining that there were at
13 least two senior litigation associates—including Meghan Blanco and Michael Anthony ("Tony")
14 Brown—who were in a position to devote substantially all of their time to completing discovery and
15 getting the case ready for trial, I advised Public Counsel that we would take the case. I also advised
16 Public Counsel that I would lead the trial, but that due to a very significant trial that I had beginning
17 in late September in Washington, D.C., I would need to recruit another trial partner to oversee the
18 case for the month that I was expected to be in Washington, D.C. My partner Marcellus McRae
19 volunteered for that role. Gibson Dunn led Plaintiffs' litigation efforts from September 2008 to the
20 present. I was the head of this team, but Mr. McRae was charged with the day-to-day responsibility
21 while I was in trial or otherwise out-of-pocket. My initial role, before I left for D.C., was to develop
22 our case strategy with co-counsel when we were first retained, allocate responsibilities among the
23 team members, identify evidentiary and legal issues we needed to resolve, and determine the state of
24 discovery and the needs for additional discovery. After I returned from D.C. and my calendar began
25 freeing up, in December, I continued with this same oversight role, but began to be more hands-on in
26 terms of plotting case strategy, assessing the state of the evidentiary record, getting the team prepared
27 for trial, and later, together with Craig Castellonet of Public Interest Law Project, negotiated the
28

1 terms of the Settlement Agreement with opposing counsel. I also closely reviewed our billing
2 records on this case, and supervised the drafting of this Motion.

3 6. As I said above, Mr. McRae managed the case on a day-to-day basis. He served as the
4 main point of contact for opposing counsel, stayed in near-constant contact with our terrific associate
5 team, developed an extremely effective pre-trial strategy, deposed the Agency's "person most
6 knowledgeable," argued a number of motions and applications, and initiated the parties' negotiations
7 for settlement. Mr. McRae and I conferred regularly about the case, either by email or phone or both,
8 including (to a lesser extent) during the period of time when I was in trial in D.C.

9 7. Mr. Brown and Ms Blanco performed the vast majority of team's daily work, and were
10 essentially full-time on the case (and often more than full-time). They efficiently divided the causes of
11 action between them. Mr. Brown drafted discovery concerning the Agency's relocation plans,
12 development of inclusionary and replacement dwelling units, and compliance with affordability
13 covenants. Mr. Brown deposed the Agency's Housing Manager and Project Manager, researched and
14 drafted most of Plaintiffs' filings, including discovery motions, Plaintiffs' opposition to the Agency's
15 Motion for Reconsideration, stipulations and *ex parte* applications, expert disclosures, and Plaintiffs'
16 Mandatory Settlement Conference Statement. He also served as the point-person for consulting with
17 Plaintiffs' affordable housing experts. Ms. Blanco was primarily responsible for assessing the need
18 for, and drafting, discovery concerning the Agency's obligations to deposit set-aside funds and
19 expend excess surplus. She deposed the Agency's "person most qualified" concerning the Agency's
20 finances, served as Gibson Dunn's point person for consulting with the Plaintiffs' financial expert,
21 supervised Gibson Dunn's review of the vast quantity of documents obtained via discovery and public
22 records requests, and played an integral part in drafting the Parties' final settlement agreement. The
23 tremendous demands of this litigation, described more fully below, caused Mr. Brown and
24 Ms. Blanco to spend more than 90% of their client chargeable hours from October 2008 to February
25 2009 on this case alone.

26 8. Gibson Dunn associates Carol Fabrizio and Kristy Grant also contributed substantial
27 time to Plaintiffs' action. Ms. Grant conducted legal research on a number of issues, performed
28 extensive document review, maintained the litigation team's case calendar, and drafted, issued, and

1 monitored Plaintiffs' third-party subpoenas. Ms. Fabrizio drafted requests for production and
2 requests for admissions, performed extensive document review, audited discovery received,
3 researched requirements of a PMK deponent, and assisted, reviewed, and summarized depositions.
4 She also helped to prepare for trial by creating exhibit and witness lists, drafting Notices to Appear at
5 Trial, and researching the applicability of Sections 998 and 1021.5 of the Code of Civil Procedure.
6 Other associates, including Melissa Barshop, Sam Kim, Sonam Makker, Bobbie Andelson, and
7 Brooke Myers, assisted the above-listed six attorneys in their tasks, by helping to research legal
8 issues, review transcripts, and perform document review.

9 **The Complexity of this Action and the Agency's Litigation Conduct**

10 **Required Very Long Hours from Plaintiffs' Counsel**

11 9. When Gibson Dunn joined the litigation team, trial was just months away, the Agency
12 had just made its first meaningful production of documents, and substantial discovery remained to be
13 accomplished in a very short time.

14 10. Both legally and factually, this case was extremely complex, and I say that as someone
15 who spends most of his time wrestling with the patent laws and technology as diverse as
16 semiconductors and the human genome. To litigate this case, our team had to familiarize itself with
17 the complex and highly specialized area of public law governing redevelopment agencies in a short
18 amount of time. This forced us to dive head-first into the complex system of statutory provisions in
19 the Government and Health & Safety Codes and the regulations that implement those provisions, a
20 task that was quite challenging even with the assistance of co-counsel specializing in this area.

21 11. In addition to the case's legal complexity, five factors contributed to the long hours our
22 attorneys spent litigating this case.

23 a. First was the broad range, and thus the enormous quantity, of potentially
24 relevant evidence including: (i) emails, letters, and internal memoranda, (ii) Agency
25 ordinances, resolutions, agendas, and staff reports; (iii) general Agency documents, such as
26 implementation plans, relocation plans, and redevelopment plans, consulting services
27 agreements and other contracts with third party consultants; (iv) housing project-specific
28 documents, including Requests for Proposals, pro formas, Disposition and Development

1 Agreements ("DDAs"), purchase and sale agreements, grant deeds, deeds of trust, promissory
2 notes, subordination agreements, closing documents, and other documents related to real
3 property transfers. (v) financial records, such as ledgers, bank statements, audited financial
4 transaction reports filed with the California State Controller, and Los Angeles County tax
5 bills. In its Motion for Reconsideration, the Agency estimated that, over the course of this
6 litigation, it had produced as many as 25,000 pages of documents. This figures does not
7 include, of course, (i) documents Plaintiffs' counsel were permitted to inspect both at the
8 Agency's offices and at an off-site storage facility between December 23, 2008, and January
9 3, 2009; or (ii) documents obtained through public records requests, including thousands of
10 building permits and over 14 years of Agency housing and County tax information. My
11 colleagues Ms. Blanco and Mr. Brown have informed me that, over the course of this
12 litigation, they reviewed and analyzed as many as 100,000 pages of potentially relevant
13 documents.

14 b. Second, the nature of the evidence needed to make out Plaintiffs' case was
15 itself complex and required an analysis of a number of highly technical records, including:
16 (i) Agency ordinances and the real property transfer documents noted above, (ii) financial
17 records; and (iii) dense, often highly technical contracts between the Agency and developers
18 and third party redevelopment consultants.

19 c. Third, Plaintiffs' First Amended Verified Petition and Complaint
20 ("Complaint") implicated Agency actions going back to 1994 and, in the Third through Sixth
21 Causes of Action, alleged violations that were cumulative in nature. Consequently, assessing
22 the evidence of those violations entailed pain-staking comparison of records from year to year
23 for as many as 14 years. For example, Plaintiffs' Fifth Cause of Action, alleging the unlawful
24 failure to expend excess surplus, required Gibson Dunn's attorneys, in consultation with our
25 financial expert, to cross-reference and aggregate financial data for several Agency funds
26 contained in records spanning over a decade.

27 d. Fourth, the Agency's records were incomplete and in disarray. Throughout
28 discovery, the Agency repeatedly claimed it could not locate records that any properly

1 functioning redevelopment agency should have been able to produce in a timely fashion, e.g.,
2 lists of Agency-funded housing projects, budgets and general ledgers, bank account
3 statements, and complete audit reports. Indeed, Both Ernie Nishii, the Agency's Housing
4 Manager, and Lorry Hempe, the Agency's current Assistant City Manager and designated
5 "person most qualified" on affordable housing issues, testified that the Agency's records were
6 so disorganized that it would be difficult for the Agency to determine even how man
7 redevelopment projects it had been involved in; and, given the state of the records, perhaps
8 impossible to reconstruct the Agency's current inclusionary housing, replacement housing,
9 and LMIHF-related obligations. Relevant excerpts from true and correct copies of the
10 certified transcripts of Ernie Nishii's and Lorry Hempe's depositions are attached to this
11 declaration as **Exhibit A** (Nishii Dep. 41:17-21, 43:1-5; Hempe Dep., Vol. 1, 148:7-151:14).
12 As a result of the Agency's appalling record-keeping, Plaintiffs' counsel, including attorneys
13 from Gibson Dunn, had in some cases to create from scratch records the Agency should have
14 been maintaining in the course of its operations.

15 e. Fifth, the Agency officers and staff members deposed, including the Agency's
16 designated "persons most qualified," lacked sufficient knowledge to answer certain basic
17 questions about Agency's redevelopment activities or finances. For example, Roger Haley,
18 the Agency's Executive Director, and both designated "persons most qualified"—Lorry
19 Hempe, Assistant City Manager, who testified about redevelopment activities; and Christy
20 Valencia, Deputy Director of Finance, who testified about the Agency's finances—were
21 unable to verify whether the Agency had a separate and segregated LMIHF as required by
22 law. Mr. Haley testified that he did not know whether the Agency maintained a separate bank
23 account for the LMIHF but that Lorry Hempe would know. Ms. Hempe testified that she
24 simply assumed set aside funds were being properly deposited into an LMIHF by the City's
25 Finance Department. Ms. Valencia testified that the Agency maintained a LMIHF but could
26 not readily explain where those funds were maintained or how the Agency accounted for
27 them. Relevant excerpts from true and correct copies of the certified deposition transcripts of
28 Roger Haley, Lorry Hempe, and Christy Valencia are attached to this declaration as

1 **Exhibit B** (Haley Dep. 88:13-92:3; Hempe Dep. Vol II, 443:22-445:25; Valencia Dep.
2 149:17-153:6). Similarly, Ms. Hempe testified that she did not know—and because of the
3 disarray of the Agency's records, could not create an accurate list of—the number of
4 properties purchased with, or the number of housing projects assisted by, funds from the
5 LMHF. Relevant excerpts from a true and correct copy of the certified transcript of
6 Ms. Hempe's deposition are attached to this declaration as **Exhibit C** (Hempe Dep., Vol. 1,
7 145:24-147:20). As a result, Plaintiffs' counsel had to depose all but two of the Agency's
8 officers and staff, including the Agency's "person most qualified" for three full, though
9 somewhat fruitless, days, in an effort to obtain answers to such questions. Some of these
10 depositions may have been avoided had the Agency's designated "persons most qualified"—
11 who, as the attached excerpts from Lorry Hempe's deposition transcript illustrate, repeatedly
12 professed ignorance about basic facts concerning Agency projects and finances—had been
13 better prepared for their depositions.

14 12. The difficulty of assessing the evidence in this case was matched only by the difficulty
15 of obtaining it. Remarkably, the Agency did not provide a single timely response to any of Plaintiffs'
16 numerous discovery requests. Responses that it did provide were invariably inadequate, requiring
17 Plaintiffs to move for further responses—as was the case with, for example, Plaintiffs' Motion for
18 Issue and Evidence Sanctions, which involved, among other discovery responses, the Agency's
19 nonresponsive and evasive Second Supplemental and Amended Responses to the Form Interrogatory
20 No. 17.1 (served with Plaintiffs' First Set of Requests for Admissions) and was granted by the Court
21 on December 23, 2008 ("December 23 Order"). Where Plaintiffs' requests for production of
22 documents ("RFPs") were involved, the Agency never adequately responded at all. For example, the
23 documents produced by the Agency in response to Plaintiffs' First Set of RFPs came in at least five
24 stages: (i) five Disposition and Development Agreements in February 2008; (ii) a box of documents
25 in July 2008; (iii) six boxes on September 9, 2008; (iv) one more box of documents in November
26 2008, after the Court on October 24 granted Plaintiffs' Motion For Order Compelling
27 Production of Documents (First Set); and (v) various individual documents emailed by the Agency's
28 counsel to Plaintiffs' counsel over the next few weeks. Throughout this litigation, the Agency

1 repeatedly claimed to be in the process of locating additional responsive documents and reserving the
2 right to produce them at a later date. Indeed, the Agency's repeated assertion in its Second
3 Supplemental and Amended Response to Interrogatory No. 17.1 that it "continues to search for
4 [responsive documents] that may exist and reserves the right to produce them when they are located"
5 was something of a motif in this case. A true and correct copy of these discovery responses is
6 attached to this declaration as **Exhibit D**. In the end, the Agency's efforts to produce documents
7 responsive to Plaintiffs First Set of RFPs was so inadequate the Court issued evidence sanctions
8 against the Agency on December 23, prohibiting the Agency from admitting into evidence for any
9 purpose in this litigation responsive documents not produced by December 31.

10 13. The Agency's chronic failure to provide timely or satisfactory discovery responses
11 required Gibson Dunn's attorneys to engage in extensive law and motion practice. Discovery
12 motions like the ones filed in this case by Plaintiffs' counsel are extremely time-consuming. They
13 require the moving party's attorney (i) to ascertain the inadequacies of the responses at issue, (ii) to
14 participate in meet-and-confer sessions, (iii) to draft the moving papers as well as the extremely fact-
15 intensive supporting declarations, separate statements, and—where, as here, time is of the essence—
16 additional *ex parte* papers for orders shortening time; and, finally, (iv) to argue the motions. Gibson
17 Dunn attorneys working on this case dedicated a substantial amount of their hours to such law and
18 motion practice. From September 2008 to February 2009, Plaintiffs' counsel filed no fewer than six
19 discovery-related motions. Notably, the Court granted five of these discovery motions, two on
20 October 24, 2008, and the remaining three on December 23, 2008. The Court did not hear the sixth
21 motion, filed in January 2009, because it was taken off calendar pending the Agency's approval of a
22 tentative settlement agreement negotiated between the Parties' counsel.

23 14. Shortly after the New Year, this case reached a critical turning point. As previously
24 mentioned, on December 23, 2008, the Court granted three Gibson Dunn-drafted discovery motions,
25 ordering (i) that the matters covered by Plaintiffs' First Set of RFAs, Plaintiff Jaime Torres's First Set
26 of RFAs, and Plaintiff Esperanza Rogel's First Set of RFAs be deemed admitted for all purposes in
27 the litigation; (ii) that the Agency was prohibited from introducing into evidence any document
28 responsive to Plaintiffs' First Set of RFPs after December 31, 2008; and (iii) imposing monetary

1 sanctions on the Agency. The issues sanctions alone went a long way toward establishing liability on
 2 all of Plaintiffs' causes of action. Then, on January 2, 2009, the Agency served its Response to
 3 Plaintiff Oscar Leon's First Set of Requests for Admissions ("Leon RFAs"), admitting each matter
 4 covered by that discovery request. Together, the matters deemed admitted by the Court's December
 5 23 Order with the Leon admissions essentially established liability on each of the affordable housing
 6 causes of action in Plaintiffs' Complaint, as illustrated by the following chart:

Cause of Action	Matters Established
9 Second 10 (Relocation Assistance)	The Agency has never provided relocation assistance to persons displaced from dwelling units within its jurisdiction. (Torres RFA No. 5.)
11 Third 12 (Inclusionary Housing 13 Obligations)	14 The Agency has failed to properly determine both the number of 15 housing units that actually have been, and the number that should 16 have been, produced to meet its inclusionary housing obligations. (Leon RFA Nos. 1-2.) 17 The Agency has no evidence that, since January 1, 1994, it has 18 satisfied any of its inclusionary housing obligations relating to any 19 redevelopment projects. (Leon RFA No. 16.) 20 Since January 1, 1994, the Agency has failed to ensure that the 21 appropriate percentage of dwelling units developed or substantially 22 rehabilitated within its jurisdiction was made available at an 23 affordable housing cost to, and occupied by, persons and families of 24 low or moderate income. (Leon RFA Nos. 3-4.)
25 Fourth 26 (Replacement Housing 27 Obligations)	28 Since January 1, 1994, the Agency has not produced the appropriate number of replacement dwelling units it was obligated to produce. (Leon RFA Nos. 5-6.) The Agency has no evidence that, from January 1, 1994, through September 13, 2006, it satisfied any of its replacement housing obligations. (Leon RFA No. 17.) The Agency has produced no replacement dwelling units since September 14, 2006. (Torres RFA No. 9.)

Cause of Action	Matters Established
1 2 Fifth 3 (LMIHF Deposit Obligations) 4	For each year since January 1, 1994, the Agency has failed to deposit at least 20% of the gross tax increment or tax allocation bond proceeds into the LMIHF. (Leon RFA Nos. 8-9)
5 Sixth 6 (LMIHF Expenditure 7 Obligations) 8 9 10 11 12 13 14 15 16 17 18	Since January 1, 1994, the Agency has not made an annual determination that LMIHF revenues spent on planning and general administrative costs were necessary for the production, improvement, or preservation of low- and moderate-income housing. (Leon RFA Nos. 12-13.) From FY 1995-1996 to FY 2007-2008 the Agency did not comply with its obligation to spend excess surplus. (Espinoza RFA Nos. 15-28.) From FY 2001-2002 to FY 2006-2007, the Agency accumulated an aggregate excess surplus of at least \$20,214,957. (Pls.' First Set RFA No. 9-14.) The Agency has not recorded any affordability covenants for housing units developed with the assistance of LMIHF revenues or for housing units it counts toward its inclusionary or replacement housing obligations. (Pls. First Set RFA No. 32-33; Torres RFA No. 11.) The Agency has not monitored affordability covenants or had them monitored by others. (Pls.' First Set RFA No. 34-35; Torres RFA Nos. 12-13.)
19 Seventh & Eighth 20 (Nondiscrimination/Fair 21 Housing Obligations) 22	Since January 1, 1994, the Agency's redevelopment activities have had discriminatory, adverse, and disproportionate impact on racial and ethnic minorities, persons with disabilities, and families with children, and further discriminate against the development of housing reserved for occupancy by lower-income households. (Leon RFA No. 26)

23 Many of these matters actually admitted or deemed admitted were identical to the findings of the
 24 California State Department of Housing and Community Development ("HCD"), which audited the
 25 Agency in 2006. True and correct copies of the Leon RFAs, the Agency's responses to the Leon
 26 RFAs, and of HCD's final audit letter, dated November 14, 2006, re attached to this declaration as
 27 Exhibits E, F, and G, respectively.
 28

1 15. Even after HCD's findings and so many of Plaintiffs' key allegations against the
2 Agency had been established, the Agency refused to engage in any serious settlement discussions
3 until the eve of trial. To encourage the Agency to come to the table, Mr. McRae on January 9
4 requested a Mandatory Settlement Conference for January 23. A week later, on January 16, the
5 Agency served Plaintiffs with a Motion for Reconsideration of the Court's December 23 Order.
6 Despite the implication of this motion, Plaintiffs' counsel served the Agency with their MSC
7 Statement long in advance of the MSC date. The Agency, however, did not send Plaintiffs' counsel
8 its MSC Statement until 11:34 p.m. the night before the conference. A true and correct copy of the
9 email containing the Agency's MSC statement, sent by Bruce Gridley of Kane, Ballmer & Berkman,
10 is attached hereto as **Exhibit H**. Then, when the Parties agreed to move settlement discussions from
11 the Court to Gibson Dunn's offices nearby, the Agency's counsel showed up more than an hour late,
12 and the Parties did not reach a settlement that day.

13 16. Plaintiffs' counsel had no choice but to vigorously prepare for trial while continuing its
14 efforts to resolve the case by settlement. For the attorneys at Gibson Dunn, this entailed:
15 (a) inspecting and analyzing thousands of pages of Agency documents never produced during
16 discovery; (b) assembling evidence matrices for each cause of action; (c) consulting with and
17 preparing experts for trial; (d) drafting still further motions for relief from discovery abuses;
18 (e) drafting and issuing third party business records subpoenas on Agency consultants and reviewing
19 the documents produced in response; and (f) drafting and issuing notices to appear and trial
20 subpoenas. Mr. McRae supervised this trial preparation on a daily basis.

21 17. Even so, Plaintiffs' counsel did not give up on the possibility of a settlement.
22 Mr. McRae continued to keep the issue of settlement alive through almost daily correspondence with
23 opposing counsel. Mr. McRae even succeeded in getting the Agency to agree to private mediation,
24 which the Parties scheduled for February 11. Under Mr. McRae's supervision, Ms. Blanco and
25 Mr. Castellaner drafted a final settlement offer incorporating many of the concrete issues Mr. McRae
26 had discussed with opposing counsel. Plaintiffs delivered this letter to the Agency on February 12.
27 Though the Agency was finally engaging in settlement discussions, there was little basis for
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1 confidence that a comprehensive agreement would be reached, and thus, with less than two weeks
2 until trial, Mr. McRae turned his full attention to trial preparation.

3 18. At this point, I became Plaintiffs' main point of contact for negotiations with the
4 Agency. Discussions got hung up on the issue of attorneys' fees. Through numerous telephone calls
5 and emails with opposing counsel, I successfully hammered out the main sticking point by proposing
6 certain language to include in the proposed Settlement Agreement. During these discussions with
7 opposing counsel, I also negotiated certain remaining terms and concretized others that had remained
8 ambiguous. After this extensive negotiation, the Parties reached a final Settlement Agreement in
9 mid-February, which the Agency approved on February 17, 2009. Gibson Dunn attorneys then
10 incorporated the approved agreement into a Stipulation and Proposed Interlocutory Judgment. But
11 because proceedings were ongoing, the agreement was recast as a Stipulation and Proposed Order,
12 which the Court signed and entered on March 23, 2009. A true and correct copy of the Court's March
13 23 Order, incorporating the Parties' Settlement Agreement, is attached to this declaration as
14 **Exhibit I.**

15 19. The Settlement Agreement, incorporated into the March 23 Order, is essentially a
16 consent judgment and permanent injunction. By imposing the following specific, concrete
17 obligations on the Agency, the March 23 Order provides Plaintiffs with virtually all of the relief they
18 requested in their Complaint:

19 a. Paragraphs 2 and 3 require that the Agency develop at least 42 inclusionary
20 dwelling units and 41 replacement dwelling units.

21 b. Paragraph 7 requires that the Agency record affordability covenants on all
22 newly developed inclusionary and replacement dwelling units, as well as all dwelling units
23 the Agency has ever counted toward the satisfaction of its inclusionary and replacement
24 housing obligations.

25 c. Paragraph 8 requires that the Agency establish, fund, administer and use in
26 accordance with applicable law a separate and segregated LMHF.
27
28

1 d. Paragraph 9 requires that the Agency replenish the LMHF with at least
2 \$312,000 in revenues owed as a result of the Agency's improper calculation of its set-aside
3 funds.

4 e. Paragraph 10 requires that the Agency deposit \$250,000 into the LMHF to
5 replace improperly expended funds.

6 f. Paragraphs 11 and 12 provide for the final and mutually binding determination
7 by a redevelopment specialist of the amount of excess surplus and any related interest and
8 penalties for which the Agency may be liable.

9 g. Paragraphs 14 through 16 provide for the full payment of all relocations
10 assistance owed to persons displaced by Agency activities, including the named Plaintiffs.

11 h. In addition to substantive affordable housing obligations imposed on the
12 Agency, Paragraphs 11 and 12 the Settlement Agreement call for a Redevelopment Specialist
13 to determine (i) all amounts of all inappropriate expenses from the LMHF, and (ii) all
14 amounts of excess surplus from FY 1996-1997 to FY 2007-2008, as well as any related
15 interest and penalties for which the Agency may be liable. Plaintiffs' financial expert, David
16 Nolte of Fulcrum Financial Inquiry LLP, estimated the Agency's excess surplus penalties
17 alone at no less than \$4.4 million. A true and correct copy of Mr. Nolte's draft expert report,
18 containing this estimate on page 2, is attached to this declaration as **Exhibit J**.

19 **Calculation of Gibson Dunn's Lodestar**

20 20. Gibson Dunn attorneys are required to keep accurate, daily time records recording the
21 amount of time spent on their daily activities and the general substance of their work. I supervised
22 the billing in this case, and have reviewed every single time entry by anyone who recorded time to
23 this matter. Moreover, I have discussed these time entries in detail with Ms. Blanco and Mr. Brown,
24 and have satisfied myself that the time for which we are seeking attorney's fees was reasonably and
25 necessarily spent to prosecute this action. A true and correct copy of the itemized time records for
26 this matter are attached hereto as **Exhibit K**. These records have been modified to reflect certain
27 time entries for which we are *not* pursuing fees. I also discovered, during the course of my review,
28

1 certain time entries that were mis-entered into our computer system, and which should have been
 2 charged to other clients; these time entries were removed entirely from the attached billing records.

3 21. As of March 18, 2009, Gibson Dunn incurred \$1,304,645.50 in legal fees and
 4 \$38,810.34 in costs and out-of-pocket expenses in connection with its prosecution of Plaintiffs'
 5 action. At my direction, however, we have excluded from our lodestar figure numerous attorney
 6 (and non-attorney) hours and costs incurred in an effort to seek recovery only for non-duplicative and
 7 particularly relevant work. Toward that end, we have: (a) deducted *all* time, regardless of task, of
 8 attorneys who worked less than 10 total hours on the case; (b) deducted numerous hours for drafts of
 9 discovery that were not ultimately used; (c) reduced or eliminated attorneys' time entries for
 10 depositions and hearings where more than one attorney was present; (d) reduced *all* time charge for
 11 reviewing and summarizing deposition transcripts; and, (e) reduced time charged for an attorney's
 12 general background work when the time invested in activities were disproportionate to the time spent
 13 substantively working on the case.

14 22. As noted in Plaintiffs' Motion for Award of Attorneys Fees, I calculated the Fees
 15 Charged using the firm's actual 2009 rates. The following charts detail the 2009 rates of each Gibson
 16 Dunn attorney who worked on this matter, the total charges actually incurred by those attorneys on
 17 this matter through March 17, 2009, and the total amount the firm has included in its lodestar figure.

18 *Total Attorney Fees Actually Incurred & Charged*

19 Attorney	2009 Rate	Total Hours Worked	Total Fees Incurred	Total Hours Billed	Total Fees Charged
21 Wayne M. Barsky Partner, JD 1983	\$905	76.75	\$69,458.75	75.15	\$68,010.75
22 Marcellus A. McRae Partner, JD 1988	\$785	339.90	\$266,821.50	338.7	\$265,879.50
23 Daniel M. Kolkey Partner, JD 1977	\$840	0.3	\$252	0.3	\$0
24 Danielle A. Katzir Associate, JD 2004	\$525	0.4	\$210	0	\$0
25 Michael Anthony Brown	\$495	746.9	\$369,715.50	738.77	\$365,691.15

Attorney	2009 Rate	Total Hours Worked	Total Fees Incurred	Total Hours Billed	Total Fees Charged
Associate, JD 2005					
Meghan Blanco Associate, JD 2005	\$495	766.00	\$379,170.00	747.36	\$369,943.20
Samy L. Sadighi Associate, JD 2005	\$495	5.7	\$2,821.50	0	\$0
Melissa L. Barshop Associate, JD 2006	\$470	46.20	\$21,714.00	46.20	\$21,714.00
Lora A. Cicconi Associate, JD 2007	\$400	0.3	\$120	0	\$0
Kristy S. Grant Associate, JD 2008	\$345	183.30	\$63,238.50	173.58	\$59,885.10
Carol A. Fabrizio Associate, JD 2008	\$345	184.20	\$63,659.00	168.70	\$58,201.50
Sonam Makker Associate, JD 2008	\$345	50.80	\$17,526.00	21.95	\$7,572.75
Brooke L. Myers Associate, JD 2008	\$345	27.70	\$9,556.50	27.70	\$9,556.50
Bobbie J. Andelson Associate, JD 2008	\$345	71.20	\$24,564	23.00	\$7,935.00
Carrie A. Ligozio Associate, JD 2008	\$345	7.5	\$2,587.50	0	\$0
Sam K. Kim Associate, JD 2008	\$345	33.20	\$11,454.00	3.28	\$1,131.60
Hane L. Kim Associate, JD 2008	\$345	5.15	\$1,776.75	0	\$0
Total through 3/17/09		2,545.5	\$1,304,645.50	2,364.69	\$1,235,521.05

23. The following chart details the 2009 rates of each Gibson Dunn paralegal who worked on this matter, the total charges actually incurred by those paralegals on this matter through

1 March 17, 2009, and the total amount the firm has included in its lodestar figure.
 2 I believe the hourly rates for Gibson Dunn's paralegals and litigation support staff are reasonable and
 3 similar to those of paralegals and litigation technical support staff doing similar work at comparable
 4 law firms in Los Angeles. Attached hereto as **Exhibit L** is a true and correct copy of an article
 5 entitled "Paralegal Pay: Top Managers Earn \$102,000 Plus Bonuses," which appeared in the July
 6 2007 issue of *Law Firm Management*. The article states that the national median hourly rate for
 7 paralegal work in mid-2007 was \$160.

8 *Total Paralegal Fees Actually Incurred & Charged*

9 Staff	Rate	Total Hours Worked	Total Fees Incurred	Total Hours Billed	Total Fees Charged
10 Lolita C. Gadberry Paralegal	\$300	80.75	\$24,225.00	80.75	\$24,225.00
11 Louie S. Hopkins Paralegal	\$295	0.2	\$59.00	0	\$0
12 Deborah D. Hoxie Paralegal	\$315	11	\$3,465.00	11	\$3,465.00
13 Brian W. Jensen Paralegal	\$180.00	8.5	\$1,530.00	0	\$0
14 S. A. Leonard Paralegal	\$290.00	30.5	\$8,845.00	30.5	\$8,845.00
15 J. M. Mendith Paralegal	\$165.00	3.7	\$610.00	0	\$0
16 S. A. Bock Litigation Database Manager	\$295.00	4.8	\$1,416.00	0	\$0
17 D. J. Barber, Practice Systems Analyst	\$295.00	12.75	\$3,761.25	12.75	\$3,761.25
18 C. H. Jones Support Staff	\$160.00	3.4	\$544.00	0	\$0
19 Total through 3/17/09		155.60	\$42,455.00	135	\$40,296.00

24. The following charts detail Gibson Dunn's total costs incurred for the litigation of Plaintiffs' action through March 17, 2009.

Total Expenses Actually Incurred & Charged

Expense	Cost	Charged
Court Fees	\$40.00	\$40.00
Document Retrieval Service	\$139.50	\$139.50
Document Search and Retrieval	\$467.66	\$467.66
Freight and Shipping	\$18.66	\$0
In House Duplication	\$9,280.17	\$0
Meals	\$402.10	\$0
Messenger and Courier Expense	\$896.56	\$896.56
On-Line Research (Lexis)	\$11,362.93	\$11,362.93
On-Line Research (Westlaw)	\$5,826.19	\$5,826.19
On-Line Research Nexis-Main	\$1,679.71	\$1,679.71
Outside Duplication and Binding	\$1,008.31	\$1,008.31
Outside Process Server	\$6,060.84	\$6,060.84
Outside Services/Consultants	\$514.41	\$514.41
Reference Materials	\$25.00	\$0
Specialized Research / Filing Fees	\$324.18	\$324.18
Telephone Charges	\$1,276.81	\$0
Transcripts / Digesting	\$10,460.30	\$10,460.30
Travel - Parking	\$16.00	\$16.00
Travel - Taxi / Miles	\$13.75	\$13.75
Total	\$49,813.08	\$38,810.34

1 Our practice is to process these expenses contemporaneously and enter them into a computerized
2 accounting system maintained by Gibson Dunn's accounting department, and I understand that this
3 practice was followed in connection with this case. I have reviewed the expenses with Mr. McRae,
4 Ms. Blanco, and Mr. Brown to satisfy myself of their accuracy, appropriateness, and fairness.
5 Expenses related to the fee demand served on the Agency and preparation of Plaintiffs' Motion have
6 not been included at this time. All of the listed expenses are of the type Gibson Dunn customarily
7 bills to its clients. Furthermore, all of the listed expenses were reasonably necessary to the
8 prosecution of Plaintiffs' claims. For example, copying of documents was necessary to create a
9 database of Agency documents that Gibson Dunn shared with co-counsel via a secure FTP website
10 and to provide attorneys with sufficient time to review and analyze them, and online use of the Lexis
11 and Westlaw databases was necessary to conduct the background legal research supporting the
12 numerous motions, *ex parte* applications, discovery requests, and other court filings prepared by
13 Gibson Dunn's attorneys.

14 Prevailing Billing Rates

15 25. I am generally familiar with the hourly rates charged by general practice firms in Los
16 Angeles, and am specifically familiar with the hourly rates of firms such as O'Melveny & Myers,
17 Latham & Watkins, and Irell & Manella, which both we and the legal community consider to be
18 among our peer firms. In particular, I am generally familiar with the hourly rates charged by such
19 firms for attorneys of comparable skill, reputation and experience, and our hourly rates are consistent
20 with the rate structures of such firms. The hourly billing rates charged by Gibson Dunn's attorneys
21 on this case are also consistent with the rates charged by other national and international law firms
22 with offices in Los Angeles for attorneys of comparable skill, reputation and experience, as shown by
23 an article entitled "A Nationwide Sampling of Law Firm Office Billing Rates," which appeared in the
24 December 8, 2008, issue of *The National Law Journal*. This article, a true and correct copy of which
25 is attached as Exhibit M, lists the 2008 billing rates for the following national and international firms
26 with offices in Los Angeles:

27 a. Manatt Phelps & Phillips's rates ranged from \$290 to \$505 for associates and
28 from \$490 to \$850 for partners.

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b. Reed Smith's rates ranged from \$235 to \$580 for associates and from \$375 to \$900 for partners.

c. Sheppard, Mullin, Richter & Hampton's rates ranged from \$275 to \$455 for associates and from \$475 to \$795 for partners.

d. Hogan and Hartson's rates ranged from \$150 to \$550 for associates and from \$375 to \$900 for partners.

e. Hughes Hubbard & Reed's rates ranged from \$270 to \$600 for associates and from \$625 to \$875 for partners.

f. Steptoe and Johnson's ranged from \$210 to \$685 for associates and from \$350 to \$895 for partners.

g. White & Case ranged from \$160 to \$920 for associates and from \$550 to \$1,260 for partners.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

April 9, 2009

FOR PUBLIC RELEASE

Wayne Barsky

Ex. 87

ORIGINAL

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
George R. Hedges (Bar No. 081873)
2 georgehedges@quinnemanuel.com
Danielle L. Gilmore (Bar No. 171457)
3 daniellegilmore@quinnemanuel.com
Sara Brenner (Bar No. 247559)
4 sarabrenner@quinnemanuel.com
865 South Figueroa Street, 10th Floor
5 Los Angeles, California 90017-2543
Telephone: (213) 443-3000
6 Facsimile: (213) 443-3100

FILED
LOS ANGELES SUPERIOR COURT

NOV 23 2006

JOHN A. CLARKE, CLERK
[Signature]
BY AMBER LA FLEUR-CLAYTON, DEPUTY

7 Attorneys for Plaintiffs in Intervention

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

COUNTY OF LOS ANGELES

11 MONROVIA NURSEY COMPANY, a
California corporation,

CASE NO. BC351140
(Consolidated with Case No. BC 354657)

12

Plaintiff,

DECLARATION OF DANIELLE L.
GILMORE IN SUPPORT OF MOTION OF
PLAINTIFFS IN INTERVENTION FOR
ATTORNEYS' FEES

13

vs.

Date: December 18, 2006
Time: 8:30 a.m.
Dept.: 53

14

HARRY E. ROSEDALE, JR., an individual;
15 RICHARD VANLANDINGHAM, an
individual; and DOES 1 through 10, inclusive,

Assigned to Hon. John P. Shook

16

Defendants.

17

18 WILLIAM BRUCE USREY, MILES R.
ROSEDALE, LANCE H. ROSEDALE,
19 SUSAN KAY BRIERLY, JOANNE M.
HUMMER (acting individually and as trustee
20 of certain testamentary trusts),

Filing Date: April 21, 2006
Trial Date: December 18, 2006

21

Plaintiffs in Intervention.

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DECLARATION OF DANIELLE L. GILMORE

I, Danielle L. Gilmore, declare as follows:

1. I am a member of the bar of the State of California and a partner of Quinn Emanuel Urquhart Oliver & Hedges, LLP ("Quinn Emanuel"), attorneys for Plaintiffs in Intervention. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of California's Second Appellate District decision in this matter, *Monrovia Nursery Co. Inc. v. Rosedale* (Sept. 24, 2008, B197739, B199444) [nonpub. opn.].

3. Attached as Exhibit B is a true and correct copy of this Court's order, dated February 28, 2007, granting attorneys' fees to the Plaintiff and to Plaintiffs in Intervention.

4. Attached as Exhibit C is a chart of all Quinn Emanuel attorneys and paralegals who have billed time from December 2006 to October 2008 in regard to tasks related to the attorneys' fees motions and appeal in this case, including the number of hours billed and the billable rates of each timekeeper. The total amount of billable dollars during that timeframe is \$199,589.75. \$9,732.50 has been deducted from that total for work unrelated to the attorneys' fees motions and appeal in this case, leading to a total amount of attorneys' fees sought of \$189,857.25

5. Attached as Exhibit D is a true and correct copy of monthly invoices submitted by Quinn Emanuel for its work in connection with Plaintiffs in Intervention's motion for attorney fees and the appeal in this action. The records are redacted in some places to protect attorney-client privileged information or attorney work product information. Further, circled entries are entries that have been removed from the billable total as they were not related to the attorneys fee motions or the appeal in this action.

6. Attached as Exhibit E is a true and correct copy of The National Law Journal's most recent "Firm by Firm Sampling of Billing Rates Nationwide," dated December 10, 2007.

1 7. Attached as Exhibit F is a true and correct copy of the Court EXPRESS
2 Legal Billing Report, which shows rates identified in fee applications for California lawyers from
3 2008.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on November 20, 2008, at Los Angeles, California.

7
8  **FOR PUBLIC RELEASE**
9 Danielle L. Gilmore

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MONROVIA V. ROSEDALE
 LOS ANGELES SUPERIOR COURT
 CASE NO. BC351140

LIST OF QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP TIMEKEEPERS
 ON BEHALF OF PLAINTIFFS IN INTERVENTION RELATING TO THE MOTION FOR
 ATTORNEYS FEES IN THIS CASE AND ITS APPEAL
 FROM DECEMBER, 2006 TO OCTOBER, 2008*

TIMEKEEPER	TITLE	RATE	HOURS	TOTAL
George R. Hedges	Partner	\$760	21.5	\$16,340.00
George R. Hedges	Partner	\$725	71.2	\$51,620.00
Danielle L. Gilmore	Partner	\$685	63.55	\$43,531.75
Bethany Henderson	Associate	\$360	46.5	\$16,740.00
Katherine Bonnici	Associate	\$320	44.7	\$14,304.00
Sara Brenner	Associate	\$340	98.3	\$33,422.00
Sara Brenner	Associate	\$310	11.3	\$3,503.00
Andrea Manka	Associate	\$330	19.4	\$6,402.00
Carol O'Connor	Paralegal	\$235	11.6	\$2,726.00
Carol O'Connor	Paralegal	\$215	5.9	\$1,268.50
TOTAL HOURS & FEES			393.95	\$189,857.25

* NOTE: The total billing during this timeframe is \$199,589.75. \$9,732.50 has been deducted from the total billing for work unrelated to the motion for attorneys' fees and the appeal in this case, leading to a total of \$189,857.25. Those hours deducted are circled in the invoices provided by Plaintiffs in Intervention in Exhibit D attached herewith.

MONROVIA

EXHIBIT C

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543.

On November 21, 2008, I served true copies of the following document(s) described as **DECLARATION OF DANIELLE L. GILMORE IN SUPPORT OF MOTION OF PLAINTIFFS IN INTERVENTION FOR ATTORNEYS' FEES** the parties in this action as follows:

Brian J. Hennigan, Esq.
Michael H. Strub, Jr., Esq.
Dena G. Kaplan, Esq.
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Tel: (310) 277-1010
Fax: (310) 203-7199

Scott B. Gamer, Esq.
HOWREY LLP
4 Park Plaza, Suite 1700
Irvine, CA 92614
Tel: (949) 721-6900
Fax: (949) 721-6910

**Attorneys for Plaintiffs Monrovia
Nursery Company**

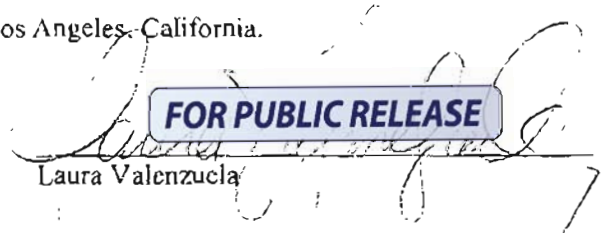
**Attorneys for Defendants Harry E.
Rosedale, Jr. and Richard
Vanlandingham**

quinn emanuel

BY FEDEX: I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in sealed envelope(s) or package(s) designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 21, 2008, at Los Angeles, California.


FOR PUBLIC RELEASE
Laura Valenzuela

Ex. 89

1 IRELL & MANELLA LLP
Brian J. Hennigan (86955)
2 Michael H. Strub, Jr. (153828)
Kimberly A. Svendsen (235785)
3 1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
4 Telephone: (310) 277-1010
Facsimile: (310) 203-7199
5
6 A.orneys for Plaintiff
MONROVIA NURSERY COMPANY

FILED
LOS ANGELES SUPERIOR COURT
NOV 21 2008
JOHN A. CLARKE, CLERK
BY SHAUNYA WESLEY, DEPUTY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 MONROVIA NURSERY COMPANY, a)
California corporation,)
12 Plaintiff,)
13 vs.)
14 HARRY E. ROSEDALE, JR., an individual;)
15 RICHARD VANLANDINGHAM, an)
individual; and DOES 1 through 10, inclusive,)
16 Defendants.)
17

Case No. BC351140
(Consolidated with Case No. BC 354657)

DECLARATION OF BRIAN J. HENNIGAN IN SUPPORT OF PLAINTIFF MONROVIA NURSERY COMPANY'S MOTION FOR AWARD OF ATTORNEYS' FEES

[Notice of Motion and Motion of Plaintiff Monrovia Nursery Company for Award of Attorneys' Fees; Memorandum of Points and Authorities; and Memorandum of Costs filed concurrently herewith]

18 WILLIAM BRUCE USREY; MILES R.)
ROSEDALE; LANCE H. ROSEDALE;)
19 SUSAN KAY BRIERLY; JOANNE M.)
HUMMER (acting individually and as trustee)
20 of certain testamentary trusts),)
21 Plaintiffs in Intervention.)
22

DATE: December 18, 2008
TIME: 8:30 a.m.
DEPT.: 53
JUDGE: Hon. John P. Shook

DATE ACTION FILED: April 21, 2006

ORIGINAL

DECLARATION OF BRIAN J. HENNIGAN

I, Brian J. Hennigan, declare as follows:

1. I am a partner at the law firm of Irell & Manella LLP ("Irell & Manella"), counsel of record for plaintiff Monrovia Nursery Company ("Monrovia") in the above-captioned action. I am a member in good standing of the State Bar of California. I submit this Declaration in support of Monrovia's motion for attorneys' fees. Except where stated, I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am a member of Irell & Manella's litigation workgroup, where I have worked since 1990. From 1983 to 1989, I worked as an Assistant United States Attorney ("AUSA") in the Criminal Division for the Central District of California (Los Angeles). As an AUSA, I served as the Deputy Chief for the Government Fraud and Public Corruption Section in the United States Attorney's Office in Los Angeles. I received the Special Achievement Award from the Department of Justice, as well as awards from other investigative agencies. In 1999, I was recognized by the *Los Angeles Business Journal* as one of the top 50 trial attorneys in Los Angeles. In January 2007, I was named one of the top 100 Los Angeles lawyers in *Los Angeles Magazine*. I have served as the President of the Federal Bar Association in Los Angeles (2004-2005) and the co-chairman of the American Bar Association, White Collar Crime Section (2004-2006). I also have served as an attorney delegate to the Ninth Circuit Judicial Conference.

3. In my post-Judgment representation of Monrovia, I was assisted by Michael H. Strub, Jr., who is of counsel to the firm, and six attorneys associated with the firm: Kimberly A. Svendsen, Dena G. Kaplan, Michael F. Bacchus, Katharine J. Galston, Aarti Khanolkar Wilson, and Elizabeth Madjlessi. I was also assisted by Michelle M. Williams, a paralegal. Although a number of additional persons at I&M performed work on this matter, they are not included in this fee request because Monrovia is not seeking to recover their fees.

4. Michael H. Strub, Jr. is a member of Irell & Manella's litigation workgroup. I am informed and believe that he is a 1990 high honors graduate of the University of Texas School of Law (Order of the Coif), and from 1990 until 1991, he clerked from the Honorable Homer

1 Thornberry (United States Court of Appeals for the Fifth Circuit) in Austin, Texas. From 1991 to
2 1997, Mr. Strub was an associate at Shearman & Sterling's Los Angeles office, then an associate
3 in Shearman & Sterling's Washington, D.C. office from August 1997 until August 1999, and
4 thereafter joined Irell & Manella. Mr. Strub's practice has included a variety of commercial
5 litigation and transactional matters – from a disputed lease for a Boeing 747 jet aircraft to a
6 dispute over profit participation in the "Judge Judy" television show – and he has represented
7 clients in a variety of jurisdictions, both in and out of California.

8 5. Kimberly A. Svendsen is a former associate in Irell & Manella's litigation
9 workgroup. I am informed and believe that she graduated from the University of California, Los
10 Angeles School of Law in 2004 (Order of the Coif) and clerked for the Honorable Stephen V.
11 Wilson in the Central District of California. While at Irell & Manella Ms. Svendsen worked on
12 cases involving contract and business torts, entertainment law, and white-collar crime, many of
13 them on behalf of national companies.

14 6. Dena G. Kaplan is a former associate in Irell & Manella's litigation workgroup. I
15 am informed and believe that she graduated from the University of Pennsylvania Law School cum
16 laude in 2003, and clerked for the Honorable Edward Rafeedie in the Central District of
17 California. While at Irell & Manella Ms. Kaplan worked on cases involving general business
18 litigation, and was named a Rising Star in California Lawyer magazine.

19 7. Katharine J. Galston is a former associate in Irell & Manella's litigation workgroup.
20 I am informed and believe that she graduated cum laude from NYU School of Law in 2003. After
21 earning her law degree, Ms. Galston served as a law clerk to the Honorable Reena Raggi (United
22 States Court of Appeals for the Second Circuit). While at Irell & Manella, Ms. Galston
23 specialized in appellate litigation matters, and worked on a variety of commercial and
24 entertainment litigation cases.

25 8. Michael F. Bacchus is a former associate in Irell & Manella's litigation workgroup.
26 I am informed and believe that he graduated from the University of Pennsylvania Law School in
27 2003 (Order of the Coif), and then worked as an associate at Patterson, Belknap, Webb & Tyler in
28 New York City. Mr. Bacchus clerked for the Honorable Diana Gribbon Motz (United States

1 Court of Appeals for the Fourth Circuit), and then he joined Irell & Manella as an associate,
2 working on civil litigation cases, including international licensing disputes and land use matters.

3 9. Aarti Khanolkar Wilson is an associate in Irell & Manella's litigation workgroup. I
4 am informed and believe that Ms. Wilson is a 2007 graduate of Yale Law School. At Irell &
5 Manella, Ms. Wilson has worked on cases involving appellate litigation and general commercial
6 litigation involving contractual disputes and fraud.

7 10. Elizabeth Madjlessi is an associate in Irell & Manella's litigation workgroup. I am
8 informed and believe that Ms. Madjlessi graduated cum laude from NYU School of Law in 2007.
9 At Irell & Manella Ms. Madjlessi has worked on cases involving intellectual property and
10 complex contractual disputes.

11 11. Michelle M. Williams is a former paralegal in Irell & Manella's litigation support
12 staff. I am informed and believe that Ms. Williams graduated from Highline Community College
13 in Washington, receiving her degree in Legal Assistant Studies, and worked as a legal secretary
14 and paralegal prior to joining Irell & Manella. From 1999 to 2008 Ms. Williams worked on a
15 variety of cases at Irell & Manella, including assisting on large intellectual property matters,
16 managing discovery, and aiding with motion practice, trial preparation and support.

17 12. Attached as Exhibit A to this Declaration is a detailed billing report documenting
18 the time spent by Irell & Manella attorneys in our representation of Monrovia before this Court.
19 On the report, "HENN" is my abbreviation, "MHST" is the abbreviation for Mr. Strub, "KSVE" is
20 for Ms. Svendsen, "DGRE" is the abbreviation for Ms. Kaplan, "KGAL" is the abbreviation for
21 Ms. Galston, "BACC" is the abbreviation for Mr. Bacchus, "KHAN" is the abbreviation for Ms.
22 Wilson, "MADJ" is the abbreviation for Ms. Madjlessi, and "4OBC" is the abbreviation for Ms.
23 Williams. Certain of the time entries in Exhibit A have been redacted on the basis of the attorney-
24 client privilege, the attorney work-product doctrine, or both, or for work for which Monrovia is
25 not seeking to recover its fees in this motion. In addition, a ten percent deduction was made from
26 the remainder to account for any duplicative work. The detailed billing report set forth as Exhibit
27 A was prepared in the manner described in the following paragraphs.

28

1 13. Irell & Manella uses a computerized system of time billing in which attorneys and
2 other timekeepers, or their assistants, enter their time into the system. Each time entry includes
3 the name of the client and matter, the number of hours spent, and a description of the work done.
4 In order to keep accurate records, timekeepers at Irell & Manella are instructed to enter their time
5 into the computer each day while their recollection of the work performed is still fresh in their
6 minds. The system is set up to send automatic prompting messages via email to any timekeeper
7 who fails to promptly enter his or her time into the system.

8 14. In order to determine the fees incurred in connection with our representation of
9 Monrovia in this action, we first took the step of asking our accounting department to print out a
10 detailed time and expense report for the relevant client-matter number.

11 15. As a next step, we reviewed the description line of each time entry in order to
12 determine whether the time was expended on matters directly related to our representation of
13 Monrovia in this lawsuit. We redacted certain material on grounds of privilege or for work for
14 which Monrovia is not requesting its attorneys' fees in this motion.

15 16. The billing rates charged to Monrovia in this matter are the customary rates
16 charged by Irell & Manella, and reflect the market value of the type of legal service and
17 experience sought by sophisticated clients in major metropolitan areas like Los Angeles. It is my
18 belief that in the Los Angeles legal community, law firms having experience and reputation
19 similar to those of Irell & Manella charge rates that are comparable to Irell & Manella's rates.

20 17. Monrovia seeks to recover fees of the following primary Irell & Manella
21 timekeepers at the following average billing rates:

22 Brian J. Hennigan (partner) – 72.5 hours at \$776.93 per hour;

23 Michael H. Strub (of counsel) – 83.5 hours at \$671.29 per hour;

24 Kimberly A. Svendsen (associate) – 104.75 hours at \$410 per hour;

25 Dena G. Kaplan (associate) – 24.25 hours at \$475 per hour;

26 Michael F. Bacchus (associate) – 18.5 hours at \$475 per hour;

27 Katharine J. Galston (associate) – 69 hours at \$492.19 per hour;

28 Aarti Khanolkar Wilson (associate) – 25.25 hours at \$325 per hour;

1 Elizabeth Madjlessi (associate) – 51.75 hours at \$355 per hour;
2 Michelle M. Williams (paralegal) – 14.75 hours at \$222.54 per hour.

3 18. After calculating the total number of hours at the appropriate respective rate we
4 reduced the total by ten percent to account for any duplicative work that may have occurred in the
5 post-judgment phase.

6 19. Attached hereto as Exhibit B is a true and correct copy of the Court EXPRESS
7 Legal Billing Report, Volume 10, Number 2 August 2008.

8 20. Attached hereto as Exhibit C is a true and correct copy of excerpts from The
9 National Law Journal's 2007 sampling of nationwide law firm billing rates, dated December 10,
10 2007.

11 21. On February 8, 2007 the trial court in this action ordered Defendants to pay
12 Monrovia's fees in the amount of \$767,931.25, the fees of plaintiffs in intervention in the amount
13 of \$494,972.00, and costs in the amount of \$25,132.88. Attached hereto as Exhibit D is a true and
14 correct copy of the Court's order.

15 22. On September 24, 2008 the California Court of Appeal affirmed the trial court's
16 finding that the attorneys' fees requested in this case were reasonable. Attached hereto as Exhibit
17 E is a true and correct copy of the Court of Appeal's decision granting the fees.

18 23. In 2005, in an unrelated matter, I submitted a fee and cost bill with regard to my
19 representation of a client in civil dispute related to a contract claim before Judge William Fahey of
20 the Los Angeles Superior Court. After briefing and hearing on the matter, Judge Fahey ordered
21 full payment on the bill. Attached hereto as Exhibit F is a true and correct copy of Judge Fahey's
22 May 20, 2005 Order granting my clients the full amount of attorneys' fees and costs they sought
23 after prevailing in an action involving a contract that contained an attorneys' fee provision.

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1 24. Attached hereto as Exhibit G is a true and correct copy of the California Court of
2 Appeal's September 5, 2006 opinion affirming Judge Fahey's award of attorneys' fees to my
3 clients.

4 Executed on November 21, 2008, at Los Angeles, California.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7
8 **FOR PUBLIC RELEASE**

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Brian J. Hennigan

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re: Chapter 11
THREE A'S HOLDINGS, L.L.C., a Case No. 06-10886 (BLS)
Delaware limited liability company, Jointly Administered
et al.,¹
Debtors. Objection Deadline: December 20, 2006

CERTIFIED:
AS A TRUE COPY:
ATTEST:

DAVID D. BIRD, CLERK
U.S. BANKRUPTCY COURT

By: *Matthew J. Jervis*
Deputy Clerk 1/8/09
85 pgs

Name of Applicant: O'Melveny & Myers LLP
Authorized to Provide Professional Services to: The above-captioned debtors and debtors-in-possession
Date of Retention: September 14, 2006 (*nunc pro tunc* to the date of commencement of these chapter 11 cases)
Period for which compensation and reimbursement are sought: October 1, 2006 through October 31, 2006
Amount of Compensation sought as actual, reasonable, and necessary: \$308,928.40 (80% of \$386,160.50)
Amount of Expense Reimbursement sought as actual, reasonable and necessary: \$6,349.08
This is a(n): X Monthly _____ Interim _____ Final Application
The total time expended for fee application preparation is approximately 12 hours.²
Prior Applications Filed: Two

¹ The Debtors are the following entities: Three A's Holdings, L.L.C., Jeremy's Holdings, LLC, Tower Direct LLC, 33rd Street Records, Incorporated, Pipernick Corp., M T S, Incorporated (d/b/a Tower Records), Columbus & Bay, Inc. and R.T. Records, Incorporated.

² This time was expended by attorneys and paraprofessionals, and compensation for this time will be calculated and requested as part of the next monthly fee application

LA3:1125300 I

This is a(n): monthly interim final application

PROFESSIONAL	POSITION, YEAR ASSUMED POSITION, PRIOR RELEVANT EXPERIENCE, YEAR OF OBTAINING RELEVANT LICENSE TO PRACTICE	HOURLY BILLING RATE	HOURS BILLED	COMPENSATION
David Krinsky	Partner in the Transactions Department. Joined firm in 1994. Member of the CA State Bar since 1973.	950	15.8	\$15,010.00
Robert Rizzi	Partner in the Transactions Department. Joined firm in 1994. Member of the CA State Bar since 1978.	950	3.5	\$3,325.00
Ben Logan	Partner in the Restructuring and Finance Department. Joined firm in 1976. Member of the CA State Bar since 1976.	860	170.9	\$142,681.65
Gordon Krischer	Partner in the Adversarial Department. Joined firm in 1971. Member of the CA State Bar since 1972 and NY State Bar since 1991.	860	1.3	\$1,118.00
Kathryn Sanders	Partner in the Transactions Department. Joined firm in 1985. Member of the CA State Bar since 1985	820	0.7	\$574.00
Suzanne Uhland	Partner in the Restructuring and Finance Department. Joined firm in 1988. Member of the CA State Bar since 1988.	820	190.4	\$151,489.62
Alejandro Mayorkas	Partner in the Adversarial Department. Joined firm in 2001. Member of the CA State Bar since 1986.	770	12.2	\$9,394.00
Shannon Lowry Nagle	Partner in the Transactions Department. Joined firm in 2007. Member of the NY State Bar since 2007. Member of VA State Bar since 1991. Member of NC State Bar since 1993. Member of State GA Bar since 1996.	710	68.8	\$48,848.00
Gary Tell	Partner in the Transactions Department. Joined firm in 1999. Member of the DC Bar since 1993.	700	0.5	\$350.00

LA3:1148107.1
 RL:F1-3300247-1

PROFESSIONAL	POSITION, YEAR ASSUMED POSITION, PRIOR RELEVANT EXPERIENCE, YEAR OF OBTAINING RELEVANT LICENSE TO PRACTICE	HOURLY BILLING RATE	HOURS BILLED	COMPENSATION
Thomas M. RJordan	Partner in the Adversarial Department. Joined firm in 1995. Member of the CA State Bar since 1995.	675	31.0	\$20,925.00
C. Brophy Christensen	Partner in the Transactions Department. Joined firm in 1997. Member of the CA State Bar since 1997.	675	3.4	\$2,295.00
Jorge DeNeve	Counsel in the Adversarial Department. Rejoined firm in 2007. Member of the CA State Bar since 1998.	620	31.2	\$19,344.00
Summer Conley	Counsel in the Transactions Department. Joined firm in 1997. Member of the CA State Bar since 1997.	600	1.7	\$1,020.00
Victoria Newmark	Counsel in the Restructuring and Finance Department. Joined firm in 1995. Member of the CA State Bar since 1995.	595	0.2	\$119.00
Christopher Campbell	Counsel in the Tax Department. Joined firm in 1999. Member of the CA State Bar since 1999.	590	59.7	\$35,223.00
Allan Johnson	Counsel in the Adversarial Department. Joined firm in 2002. Member of the CA State Bar since 2001.	565	49.0	\$27,685.00
Natausha Wilson	Counsel in the Transactions Department. Joined the firm in 2007. Member of the NY and NJ State Bars since 2002 and the CA State Bar since 2003.	565	121.7	\$68,760.50
Arthur (Schan) Duff	Counsel in the Adversarial Department. Joined firm in 2004. Member of the DC Bar since 2003.	540	8.8	\$4,752.00
Justin Laubach	Counsel in the Transactions Department. Joined firm in 2003. Member of the CA State Bar since 2002.	540	54.9	\$29,646.00
Emily Culler	Associate in the Restructuring and Finance Department. Joined firm in 2002. Member of the CA State Bar since 2002.	540	1.9	\$1,026.00

LA3:1148107.1
RLF1-3300247-1

PROFESSIONAL	POSITION, YEAR ASSUMED POSITION, PRIOR RELEVANT EXPERIENCE, YEAR OF OBTAINING RELEVANT LICENSE TO PRACTICE	HOURLY BILLING RATE	HOURS BILLED	COMPENSATION
Laine Mervis	Associate in the Transactions Department. Joined firm in 2007. Member of the CA State Bar since 2003.	520	8.6	\$4,472.00
Andrew Parlen	Associate in the Transactions Department. Joined firm in 2007. Member of the CA State Bar since 2004.	520	297.8	\$151,222.48
Scott Sugino	Associate in the Transactions Department. Joined firm in 2006. Member of the IL State Bar since 2003 and member of the CA State Bar since 2004.	520	2.0	\$1,040.00
Joshua Weisser	Associate in the Transactions Department. Joined the firm in 2007. Member of the NY State Bar since 2006.	490	2.2	\$1,078.00
Jennifer Halvas	Associate in the Transactions Department. Joined firm in 2004. Member of the CA State Bar since 2004.	480	2.1	\$1,008.00
Mike Symons	Associate in the Transactions Department. Joined firm in 2004. Member of the CA State Bar since 2004.	480	28.1	\$13,488.00
Nima Amini	Associate in the Transactions Department. Joined firm in 2006. Member of the CA, MN and DC Bars since 2005, 2006 and 2007, respectively.	450	9.3	\$4,185.00
Abby Schwartz	Associate in the Adversarial Department. Joined firm in 2006. Member of the CA State Bar since 2007.	450	4.8	\$2,160.00
Ana Acevedo	Associate in the Transactions Department. Joined firm in 2006. Not currently a member of the CA State Bar.	395	108.0	\$42,660.00
Danielle Oakley	Associate in the Adversarial Department. Joined firm in 2006. Member of the CA State Bar since 2006.	395	58.2	\$22,337.25

LA3:1148107.1
 RJ.F1-3300247-1

PROFESSIONAL	POSITION, YEAR ASSUMED POSITION, PRIOR RELEVANT EXPERIENCE, YEAR OF OBTAINING RELEVANT LICENSE TO PRACTICE	HOURLY BILLING RATE	HOURS BILLED	COMPENSATION
Adrian Pollner	Associate in the Adversarial Department. Joined firm in 2006. Member of the CA State Bar since 2006.	395	25.0	\$9,875.00
Michael Scheppele	Associate in the Transactions Department. Joined firm in 2006. Member of the CA State Bar since 2006.	395	0.2	\$79.00
Angela Wang	Associate in the Transactions Department. Joined firm in 2006. Member of the NY State Bar since 2007.	395	151.5	\$59,842.50
Melanie McLaughlin	Associate in the Transactions Department. Joined the firm in 2007. Member of the NY State Bar since 2008.	365	0.6	\$219.00
Ryan Austin	Associate in the Transactions Department. Joined the firm in 2007. Member of the CA Bar since 2007.	330	24.9	\$8,217.00
Timothy P. Caballero	Associate in the Adversarial Department. Joined firm in 2007. Member of the CA State Bar since 2007.	330	2.4	\$792.00
Lynn Talab	Adversarial Paralegal since 1992.	310	64.8	\$20,088.00
Gregory Trotter	Transactions Paralegal since 1989.	310	0.5	\$155.00
Timothy Sheehan	Adversarial Paralegal since 2004.	225	1.9	\$427.50
Michael Donovan	Litigation Support Specialist since 2005.	260	66.3	\$17,238.00
James McCarthy	Adversarial Paralegal since 1997.	245	17.0	\$4,165.00
Debra Fisher	Librarian since 1980.	225	0.7	\$157.50
Denise Lieu	Practice Support Analyst since 2006.	220	0.6	\$132.00
Catherine Mirhady	Litigation Support Specialist since 2007.	220	41.5	\$9,130.00
Karen Nguyen	Litigation Support Specialist since 2004.	220	2.2	\$484.00
Ryan Lopez	Litigation Support Specialist since 2007.	220	0.4	\$88.00

LA3:1148107.1
 RJ.F1-3300247-1

PROFESSIONAL	POSITION, YEAR ASSUMED POSITION, PRIOR RELEVANT EXPERIENCE, YEAR OF OBTAINING RELEVANT LICENSE TO PRACTICE	HOURLY BILLING RATE	HOURS BILLED	COMPENSATION
Stella Kim	Transactions Project Assistant since 2007.	190	4.4	\$836.00
Brian Osimiri	Transactions Project Assistant since 2006.	190	15.6	\$2,964.00
Elizabeth Ene	Litigation Support Specialist since 2007.	110	16.1	\$1,771.00
TOTAL			1785.3	\$963,897.00

LA3:1148107.1
 RLF1-3300247-1

COMPENSATION BY PROJECT CATEGORY

Fee Summary - April 1, 2008 through April 30, 2008		
Matter	Hours	Fees
Case Administration (071)	27.2	\$20,361.00
Non-Working Travel (072)	37.1	\$13,216.00
Asset Analysis/Recovery (073)	0.1	\$82.00
Asset Disposition (074)	34.4	\$17,105.50
Relief from Stay Proceedings (075)	13.2	\$7,690.50
Meetings/Communications with Creditors (076)	0.6	\$186.00
Fee/Employment Objections (077)	115.7	\$64,309.50
Assumption/Rejection of Leases and Contracts (080)	92.8	\$53,073.00
Claims Administration and Objections (081)	64.7	\$41,715.00
Plan & Disclosure Statement (082)	933.2	\$514,465.00
General Litigation/Litigation Claims (083)	67.4	\$32,370.50
Reclamation Claims (086)	1.0	\$520.00
Fee/Employment Applications (087)	88.2	\$36,609.00
Employee Matters (Benefits, Pensions) (089)	5.6	\$2,925.00
Corporate and Securities Matters (090)	24.3	\$17,015.00
Tax Issues (091)	36.0	\$23,495.00
Government Investigations (093)	141.8	\$52,603.50
Warehouse Lenders (094)	16.5	\$14,190.00
Deferred Compensation Plan Litigation (095)	21.1	\$12,605.50
Access Lending (096)	42.5	\$26,801.00
WARN Litigation (097)	21.4	\$12,206.00
Examiner Issues (098)	0.5	\$353.00
Total	1,785.3	\$963,897.00

LA3-1148107.1
RLF1-3300247-1

EXPENSE SUMMARY

Expense Summary – April 1, 2008 through April 30, 2008	
Expense	Amount
Copying (Equitrac – Internal) (E101E)	\$521.20
Lasertrak Printing (E101L)	\$571.10
Specialty Photocopying (E101SP)	\$110.50
Outside Printing/Reproduction (Photocopying) (E102A)	\$3,048.45
Outside Printing/Reproduction (Microfilming) (E102A1)	\$890.55
Outgoing Faxes (E104)	\$10.00
Telephone (Accounts Payable) (E105A)	\$163.40
Premiere Global Service Conference Call (E105P)	\$16.93
Online Research / Lexis-Nexis (E106L)	\$625.14
Online Research / Miscellaneous (E106M)	\$344.48
Online Research / Westlaw (E106W)	\$525.47
Delivery Services/Messengers (E107)	\$2,053.61
Local Travel (Taxi) (E109TX)	\$70.47
Expense Report Other - Includes Out of Town Travel (E110)	\$407.08
Out of Town Travel (Expense Reports - Meals) (E110EM)	\$60.00
Out-of-Town Travel (Direct Bill Firm – Airfare) (E110T)	\$8,027.24
Other Professionals (Accounts Payable) (E123A)	\$1,816.89
Other (Internal Bindery) (E124B1)	\$1.25
Scanning Services (Accuroute) (E130AR)	\$28.10
Total	\$19,291.86

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11
: :
NEW CENTURY TRS HOLDINGS, : Case No. 07-10416(KJC)
INC., a Delaware corporation, et al.,¹ : :
: Jointly Administered
Debtors. : :
: Hearing Date: Only if Objection is Received
: :
: Objection Deadline: July 28, 2008

**THIRTEENTH MONTHLY APPLICATION OF O’MELVENY & MYERS LLP FOR
ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND
FOR REIMBURSEMENT OF EXPENSES AS CO-COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION FOR THE PERIOD
APRIL 1, 2008 THROUGH APRIL 30, 2008**

Pursuant to Sections 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Court’s Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals dated April 25, 2007 [Docket No. 389] (the “Administrative Order”), O’Melveny & Myers LLP (“OMM”) hereby files this Thirteenth Monthly Application for Allowance of Compensation for Services Rendered and for Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from April 1, 2008 through and including April 30, 2008 (the “Application”). By this

¹ The Debtors are the following entities: New Century Financial Corporation (f/k/a New Century REIT, Inc.), a Maryland corporation; New Century TRS Holdings, Inc. (f/k/a New Century Financial Corporation), a Delaware corporation; New Century Mortgage Corporation (f/k/a JBE Mortgage) (d/b/a NCMC Mortgage Corporate, New Century Corporation, New Century Mortgage Ventures, LLC), a California corporation; NC Capital Corporation, a California corporation; Home123 Corporation (f/k/a The Anyloan Corporation, 1800anyloan.com, Anyloan.com), a California corporation; New Century Credit Corporation (f/k/a Worth Funding Incorporated), a California corporation; NC Asset Holding, L.P. (f/k/a NC Residual II Corporation), a Delaware limited partnership; NC Residual III Corporation, a Delaware corporation; NC Residual IV Corporation, a Delaware corporation; New Century R.E.O. Corp., a California corporation; New Century R.E.O. II Corp., a California corporation; New Century R.E.O. III Corp., a California corporation; New Century Mortgage Ventures, LLC (d/b/a Summit Resort Lending, Total Mortgage Resource, Select Mortgage Group, Monticello Mortgage Services, Ad Astra Mortgage, Midwest Home Mortgage, TRATS Financial Services, Elite Financial Services, Buyers Advantage Mortgage), a Delaware limited liability company; NC Deltex, LLC, a Delaware limited liability company; NCoral, L.P., a Delaware limited partnership; and New Century Warehouse Corporation, a California corporation.

Application, OMM seeks a monthly allowance pursuant to the Administrative Order with respect to the sums of \$771,117.60 (80% of \$963,897.00) as compensation and \$19,291.86 for reimbursement² of actual and necessary expenses for a total of \$790,409.46 for the period April 1, 2008 through and including April 30, 2008 (the "Compensation Period"). In support of this Application, OMM respectfully represents as follows:

Background

1. On April 2, 2007 (the "Petition Date"), the Debtors, other than Access, filed the instant petitions for relief and the Debtors' bankruptcy cases are being jointly administered pursuant to an order of the Court. Access filed its chapter 11 petition on August 3, 2007 (the "Access Petition Date"). The Debtors are operating their business and managing their affairs as debtors and debtors in possession.

2. The retention of OMM by the Debtors other than Access was approved effective as of the Petition Date by this Court's Order dated May 7, 2007 [Docket No. 567] (the "Retention Order"). The Retention Order authorized OMM to be compensated on an hourly basis and to be reimbursed for actual and necessary out-of-pocket expenses. Subsequently, on October 23, 2007, the scope of OMM's retention was expanded to include the representation of Access effective as of the Access Petition Date.

Compensation Paid and its Source

3. All services for which compensation is requested by OMM were performed for or on behalf of the Debtors.

4. Except to the extent of the retainers paid to OMM as described in the applications seeking approval of OMM's employment by the Debtors during the period covered by this Application, OMM has received no payment and no promises for payment from any source for

² In accordance with the procedures approved by the Court pursuant to the Administrative Order, upon the filing of a certificate of no objection with the Court, the Debtors are authorized to pay OMM an amount equal to the lesser of (i) 80% of the fees (\$771,117.60) and 100% of the expenses (\$19,291.86) requested in the Application and (ii) 80% of the fees and 100% of the expenses not subject to an objection.

services rendered or to be rendered in any capacity whatsoever in connection with the matters covered by this Application. There is no agreement or understanding between OMM and any other person other than the partners of OMM for the sharing of compensation to be received for services rendered in these cases.

Fee Statements

5. The fee statements for the Compensation Period are attached hereto as Exhibit A. The statements contain daily time logs describing the time spent by each attorney and paraprofessional for this period.³ To the best of OMM's knowledge, this Application complies with Sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Guidelines adopted by the Office of the United States Trustee, Del. Bankr. L.R. 2016-2 and the Administrative Order.

Actual and Necessary Expenses

6. A summary of the actual and necessary expenses and daily logs of expenses incurred by OMM for the Compensation Period is attached hereto as Exhibit B. OMM has charged \$1.00 per page for out-going facsimile transmissions and \$.10 per page for photocopying expenses for the purposes of these bankruptcy cases, in accordance with Del. Bankr. L.R. 2016-2(e)(iii).⁴ Actual long-distance carrier charges for outgoing facsimile transmissions are reflected in the long-distance telephone charges.

7. Regarding providers of on-line legal research (e.g., LEXIS and WESTLAW), OMM charges all its clients the standard usage rates these providers charge, which, due to contractual flat fees, may not always equal OMM's actual cost. OMM is currently under contract to pay these providers a flat fee every month. For certain months the flat fee may be higher than actual usage. For certain other months the flat fee may be lower than actual usage.

³ OMM's word processing and distribution handling expenses are not included in its overhead but instead are charged separately to clients. OMM generally charges its bankruptcy clients at the same rates as its non-bankruptcy clients but, consistent with applicable guidelines, is not seeking reimbursement from the Debtors' estates for these actual incurred expenses.

⁴ OMM typically charges its clients \$1.25 per page for out-going facsimile transmissions and \$0.15 per page for photocopying expenses.

Charging its clients the on-line providers' standard usage rates allows OMM to cover adequately the monthly flat fees it must pay to these types of providers.

8. OMM believes the foregoing rates are the market rates that the majority of law firms charge clients for such services. In addition, OMM believes that such charges are in accordance with the American Bar Association's ("ABA") guidelines, as set forth in the ABA's Statement of Principles, dated January 12, 1995, regarding billing for disbursements and other charges.

Summary of Services Rendered

9. The partners, counsel and associates who rendered professional services in this case during the Compensation Period are: Robert Rizzi, Ben Logan, David Krinsky, Gordon Krischer, Kathryn Sanders, Suzzanne Uhland, Alejandro Mayorkas, Shannon Lowry Nagle, Thomas Riordan, Gary Tell, C. Brophy Christensen, Victoria Newmark, J. Jorge DeNeve, Summer Conley, Christopher Campbell, Allan Johnson, Natausha Wilson, Justin Laubach, Arthur (Schan) Duff, Emily Culler, Laine Mervis, Andrew Parlen, Scott Sugino, Joshua Weissner, Jennifer Halvas, Mike Symons, Nima Amini, Abby Schwartz, Ana Acevedo, Danielle Oakley, Adrian Pollner, Michael Scheppele, Angela Wang, Melanie McLaughlin, Sue Derian, Ryan Austin, and Timothy Caballero.

10. The paraprofessionals of OMM who provided services to the attorneys in these cases are: Lynn Talab, Gregory Trotter, Timothy Sheehan, Michael Donovan, James McCarthy, Debra Fisher, Denise Lieu, Catherine Mirhady, Karen Nguyen, Ryan Lopez, Brian Osimiri, Elizabeth Ene, and Stella Kim. OMM by and through the above-named persons, has prepared and/or assisted in the preparation of various applications and orders submitted to the Court for consideration, advised the Debtors on a regular basis with respect to various matters in connection with these cases, and has performed professional services which are described and narrated in detail hereafter.

Summary of Services by Project

11. The services rendered by OMM during the Compensation Period can be

grouped into the categories set forth below.

A. Case Administration (071)

Fees: \$20,361.00 Total Hours: 27.2

This category includes all matters related to filing documents with the Court, service thereof, maintenance of calendars, communications with the U.S. Trustee, regular status calls including management and professionals, review of work in process reports, review of notices of appearances and maintaining services lists.

B. Non-Working Travel (072)

Fees: \$13,216.00 Total Hours: 37.1

This category includes all travel time not otherwise chargeable (and is billed at one-half the normal billing rate) in accordance with Del. Bankr. L.R. 2016-2(e)(iii).

C. Asset Analysis (073)

Fees: \$82.00 Total Hours: 0.1

This category includes all matter relating to the analysis of the Debtors assets.

D. Asset Disposition (074)

Fees: \$17,105.50 Total Hours: 34.4

This category includes all matters relating to the disposition of property of the estate. OMM provided significant services during these cases assisting the Debtors' efforts in pursuing major asset sales and during the Compensation Period continued to render services in connection with follow up matters related to these transactions. On May 7, 2007, the Court entered an order approving the sale of a pool of approximately 2,200 unencumbered mortgage loans to Ellington Management Group, L.L.C. on behalf of its Client Funds ("Ellington"). On May 23, 2007, the Court authorized the sale of the Debtors' servicing business (the "Carrington Sale") to Carrington Mortgage Services, LLC, an affiliate of Carrington Capital Management, LLC. On June 27, 2007, the Court approved an amendment to that sale agreement approving the sale of additional loans to Ellington. On July 3, 2007, the Court entered an order approving the sale of certain technology assets to EquiFirst Corporation. On September 14, 2007, the Court authorized

the sale of 235 mortgage loans (the "Disputed Loans"), the rights to which were disputed between the Debtors and Deutsche Bank Structured Properties, Inc. Finally, on January 24, 2008, the Court authorized the sale of 41 mortgage loans (the "Ohio LNFA") of the sale of such loans (subject to overbid) to GRP Financial Services Corporation for approximately \$1.4 million. Those sales are now successfully closed.

During the Compensation Period, OMM's efforts included attending to post-closing matters associated with the Carrington Sale. In that regard OMM spent time working with the Debtors in connection with the assignment of certain licenses and contracts to Carrington. OMM also spent time attending to post-closing matters regarding the Ohio LNFA sale. Additionally, during the Compensation Period, OMM also spent substantial time advising the Debtors in connection with and facilitating the sale of miscellaneous assets (particularily intellectual property assets) pursuant to Court-approved procedures.

E. Relief from Stay Proceedings (075)

Fees: \$7,690.50 Total Hours: 13.2

This category includes all matters related to and including all motions and stipulations to modify the automatic stay and issues related to the effect of the automatic stay or pending matters.

F. Meetings/Communications with Creditors (076)

Fees: \$186.00 Total Hours: 0.6

OMM spent time during the Compensation Period receiving and responding to numerous written and telephonic queries from creditors.

G. Fee/Employment Objections (077)

Fees: \$115.7 Total Hours: 115.7

This category includes all matters related to (i) responding to objections to OMM's employment and fee applications and (ii) objecting to employment and fee applications on behalf of the Debtors. During the Compensation Period, OMM spent its time in this category responding to the Fee Auditor's initial report regarding OMM's fees during the period April 2, 2007 through

July 31, 2007.

H. Assumption/Rejection of Leases and Contracts (080)

Fees: \$53,073.00 Total Hours: 92.8

This category includes all matters related to contract and lease analysis and matters related to assumption, assignment or rejection of executory contracts and unexpired leases. During the Compensation Period, OMM analyzed its claims under contracts with third parties. Additionally, on behalf of the Debtors, OMM was successful in reaching an agreement with Accenture, pursuant to which Accenture agreed to pay the Debtors \$1.9 million and to release \$6.3 million of claims against the Debtors' estates. OMM drafted a motion seeking approval of this settlement agreement, which motion was granted by the Bankruptcy Court on April 21, 2008.

I. Claims Administration and Objections (081)

Fees: \$41,715.00 Total Hours: 64.7

This category includes all matters related to and including claims administration matters and bar date matters, including claims objections and related contested matters. Among other tasks, OMM worked with the Debtors and their other professionals to analyze claims filed against the Debtors, strategize with respect to the claims objection process, and prepare omnibus objections to claims. Moreover, OMM spent time in this category negotiating with creditors holding claims to which the Debtors had previously objected. During the Compensation Period OMM also rendered services in connection with the Debtors' equipment financing arrangement with GMAC and the respective rights of the Debtors and GMAC. Additionally, OMM worked with the Debtors to resolve large claims filed by the state of Ohio and AT&T.

J. Plan & Disclosure Statement (082)

Fees: \$514,465.00 Total Hours: \$933.2

This category includes all matters related to the the joint chapter 11 plan of liquidation of the Debtors and the Committee (the "Plan"). Much of services rendered by OMM in this matter during the Compensation Period related to preparing for the April 24-25, 2008 hearing on the confirmation of the Plan (the "Confirmation Hearing"). Leading up to the Confirmation

Hearing, OMM coordinated the Debtors' document production to the Ad Hoc Committee of Beneficiaries of the New Century Financial Corporation Deferred Compensation Plan and/or Supplemental Executive Retirement/Savings Plan (the "Ad Hoc Committee"). OMM also prepared Holly Etlin and Todd Brents for their depositions by the Ad Hoc Committee and defended them at their depositions. Additionally, OMM worked with numerous creditors, the Securities and Exchange Commission, and the Office of the United States Trustee to resolve both formal and informal objections to the Plan, which efforts resulted in only two standing objections to the Plan at the Confirmation Hearing and the filing of a second amended plan on April 23, 2008. OMM also was primarily responsible for all briefing related to the Plan, which included an extensive reply brief in response to the objections of the Ad Hoc Committee and the New York State Teachers' Retirement System as lead plaintiff in a securities class action suit. Among other tasks, OMM communicated with numerous creditors of the Debtors regarding the Plan, assisted with the preparation of the Liquidating Trust Agreement and the Plan Administrator Agreement, drafted a motion requesting an order approving modifications to the Plan, prepared a draft Confirmation Order, drafted declarations of Holly Etlin and Todd Brents in support of the Plan, negotiated voting stipulations, and attended to other matters regarding Plan voting. Subsequently, on April 24 and 25, 2008, three OMM attorneys attended the Confirmation Hearing.

K. General Litigation/Litigation Claims (083)

Fees: \$32,370.50 Total Hours: 64.7

This category includes all matters relating to pending state court litigation matters and adversary proceedings for which no separate matter is listed.

L. Reclamation Claims (086)

Fees: \$ 520.00 Total Hours: 1.0

This category includes the analyses of reclamation claims asserted in the Debtors' cases. During the Compensation Period, OMM negotiated and drafted a supplemental stipulation regarding the reclamation claim of KST Data, Inc.

M. Fee/Employment Applications (087)

Fees: \$36,609.00 Total Hours: 88.2

This category includes all matters related the retention and compensation of professionals in the Debtors' cases. During the Compensation, OMM prepared its monthly fee applications for February 2008 and March 2008. OMM also completed a supplemental declaration in support of its employment so as to remain in compliance with Rule 2014 of the Federal Rules of Bankruptcy Procedure, which task included an extensive supplemental conflicts check.

N. Employee Matters (Benefits, Pensions) (089)

Fees: \$2,925.00 Total Hours: 5.6

This category includes all matters related to employee wages, employee plans, benefits, other employee relations matters and retiree benefits. During the Compensation Period, OMM's time in this matter centered on addressing issues related to the Department of Labor's audit of the Debtors' 401(k) plan.

O. Corporate and Securities Matters (090)

Fees: \$17,015.00 Total Hours: 24.3

This category includes the drafting of board resolutions, the preparation and filing of reports required by the Securities and Exchange Commission, preparing materials for and attending board of directors meetings, and related research.

P. Tax Issues (091)

Fees: \$3,495.00 Total Hours: 36.0

This category includes all federal and state income, property, employment, excise and other tax matters, other than tax aspects of a chapter 11 plan. During the Compensation Period, OMM spent a substantial amount of time within this category analyzing the Debtors' tax liabilities and assisting the Debtors in connection with the ongoing IRS audit, including communicating with IRS counsel regarding the IRS' proof of claim and with the Committee regarding open audit issues.

Q. Government Investigations (093)

Fees: \$52,603.50 Total Hours: 141.8

Continuing its work from prior to the Petition Date, OMM assisted the Debtors in addressing certain ongoing investigations being conducted by the U.S. Department of Justice and the Securities and Exchange Commission relating to prepetition criminal and regulatory investigations by such entities.

R. Warehouse Lenders (094)

Fees: \$14,190.00 Total Hours: 16.5

This category includes all matters related to the Debtors' master repurchase agreements and master loan purchase agreements and to the Debtors' disputes with the counterparties to such agreements. OMM spent time during the Compensation Period analyzing and negotiating the deficiency claims of counterparties to master repurchase agreements

S. Deferred Compensation Plan Litigation (095)

Fees: \$12,605.50 Total Hours: 21.1

This category includes all matters related to litigation concerning the Debtors' deferred compensation plan (the "Deferred Compensation Plan Litigation"). In particular, OMM continued its analysis of the documents governing the Debtors' deferred compensation plan and its fact investigation and legal analysis pertaining to the Deferred Compensation Plan Litigation. Additionally, OMM engaged in strategy discussions with the Committee.

T. Access Lending (096)

Fees: \$26,801.00 Total Hours: 42.5

This category includes all matters related to the Access chapter 11 case. During the Compensation Period, OMM analyzed claims against Access Lending, worked to negotiate a settlement with Access Lending's largest creditor regarding its claim against Access Lending, and negotiating payment of amounts owed under the asset purchase agreement pursuant to which the assets of Access Lending were sold to Access Holdings. In addition, OMM spent substantial time

in this matter modifying Access Lending provisions of the Plan and drafting a motion related thereto.

U. WARN Litigation (097)

Fees: \$12,206.00 Total Hours: 21.4

This category includes all matters related to the WARN Act lawsuit brought against the Debtors, for which O'Melveny assumed responsibility at the end of June, 2007. During the Compensation Period, OMM spent time in this category negotiating a settlement of the litigation with the plaintiffs and the Committee.

V. Examiner Issues (098)

Fees: \$353.00 Total Hours: 0.5

This category includes all matters related to facilitating the Debtors' cooperation with the investigation being conducted by the Court-appointed examiner.

Valuation of Services

12. Attorneys and paraprofessionals of OMM have expended a total of 1,785.3 hours in connection with this matter during the Compensation Period.

13. The nature of the work performed by these persons is fully set forth in Exhibit A attached hereto. These are OMM's normal hourly rates for work of this character. The reasonable value of the services rendered by OMM to the Debtors during the Compensation Period is \$963,897.00.

14. In accordance with the factors set forth in Section 330 of the Bankruptcy Code, OMM respectfully submits that the amounts requested are fair and reasonable given (a) the complexity of this case, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services and (e) the costs of comparable services other than in a case under this title. Moreover, OMM has reviewed the requirements of Del. Bankr. L.R. 2016-2 and believes that this Application complies with that Rule.

WHEREFORE, OMM respectfully requests that the Court enter an order providing that, for the Compensation Period, an allowance be made to OMM with respect to the sum of \$771,117.60 (80% of \$963,897.00) as compensation for necessary professional services rendered, and the sum of \$19,291.86 for reimbursement of actual necessary costs and expenses, for a total of \$790,409.46, and that such sums be authorized for payment less any sums that have been previously paid to OMM pursuant to the Administrative Order, and for such other and further relief as the Court may deem just and proper.

Dated: July 8, 2008
Wilmington, Delaware

Respectfully submitted,

/s/ Andrew M. Parlen

Suzanne Uhland
Ben H. Logan
Andrew M. Parlen
O'MELVENY & MYERS LLP
275 Battery Street
San Francisco, California 94111
(415) 984-8700

ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

Suzanne Uhland, after being duly sworn according to law, deposes and says:

- a) I am counsel with the applicant firm, O'Melveny & Myers LLP, co-counsel to the Debtors in the above-captioned matter.
- b) I have performed and am familiar with the work performed on behalf of the Debtors by O'Melveny & Myers LLP.
- c) I have reviewed the foregoing Application and the facts set forth therein are true and correct to the best of my knowledge, information and belief. Moreover, I have reviewed Del. Bankr. L.R. 2016-2 and submit that the Application substantially complies with such Rule.

FOR PUBLIC RELEASE

Suzanne Uhland

SWORN AND SUBSCRIBED before me this ___th day of _____, 2008

Notary Public

CALIFORNIA JURAT WITH AFFIANT STATEMENT

See Attached Document (Notary to cross out lines 1-6 below)
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California
County of Orange

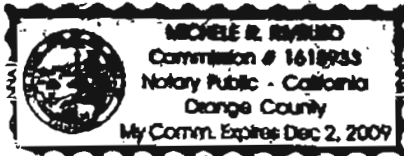
Subscribed and sworn to (or affirmed) before me on this
7th day of July, 2008 by
Date Name of Signer
(1) FOR PUBLIC RELEASE

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) to

(2) FOR PUBLIC RELEASE
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature FOR PUBLIC RELEASE
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

DECLARATION OF JAMES GILLIAM

1 **DECLARATION OF JAMES W. GILLIAM**

2 I, JAMES W. GILLIAM, declare:

3 1. I am an attorney admitted to practice in the State of California. I
4 make this declaration from facts of which I have personal knowledge; if I were
5 called upon to testify to those facts, I could and would do so competently.

6 2. I received my J.D. degree in 2003 from Loyola Law School and
7 began working in the litigation department of Paul, Hastings, Janofsky & Walker
8 LLP's ("Paul Hastings") Los Angeles office that same year. I left Paul Hastings in
9 March 2010 to become the Deputy Executive Director at the ACLU of Southern
10 California.

11 3. I am submitting this declaration in support of Plaintiff's motion for
12 attorneys' fees, to support the reasonableness of the hourly rates sought by
13 Plaintiff's attorneys.

14 4. During the six years I worked at Paul Hastings, I was the attorney
15 responsible for allocating the budgets and then reviewing the Billing Summary
16 Reports for all of our office's more than 400 pro bono matters. In performing that
17 function, I learned the hourly rates that Paul Hastings charges for various of the
18 firm's attorneys, based on their years of experience and expertise, including Paul
19 Hastings' hourly billing rates for the year 2010.

20 5. I understand that Plaintiff is seeking compensation for Mark
21 Rosenbaum, a 1974 law school graduate at a rate of \$775 per hour. Under the
22 current billing rate schedule at Paul Hastings, an attorney with the skill and
23 experience of Mr. Rosenbaum would be billed at a rate of \$940 per hour. Based
24 on my overall knowledge of the market for legal services, I believe this rate is well
25 within the upper range of rates charged by Los Angeles firms for attorneys with
26 that level of experience, background and specialized expertise. Accordingly, I
27 believe that the \$775 rate at which Mr. Rosenbaum is seeking compensation is
28

1 well within the range of rates within the market for a lawyer with his skill and
2 experience in Los Angeles.

3 6. I understand that Plaintiff is seeking compensation for Hector
4 Villagra, a 1994 law school graduate, at a rate of \$575. Under the current billing
5 rate schedule at Paul Hastings, an attorney with the skill and experience of Mr.
6 Villagra would be billed at a rate of \$725 per hour. Based on my overall
7 knowledge of the market for legal services, I believe this rate is well within the
8 upper range of rates charged by Los Angeles firms for attorneys with that level of
9 experience, background and specialized expertise. Accordingly, I believe that the
10 \$575 rate at which Mr. Villagra is seeking compensation is well within the range
11 of rates within the market for a lawyer with his skill and experience in Los
12 Angeles.

13 7. I understand that Plaintiff is seeking compensation for Peter
14 Eliasberg, a 1994 law school graduate at a rate of \$575 per hour. Under the
15 current billing rate schedule at Paul Hastings, an attorney with the skill and
16 experience of Mr. Eliasberg would be billed at a rate of \$725 per hour. Based on
17 my overall knowledge of the market for legal services, I believe this rate is well
18 within the upper range of rates charged by Los Angeles firms for attorneys with
19 that level of experience, background and specialized expertise. Accordingly, I
20 believe that the \$575 rate at which Mr. Eliasberg is seeking compensation is well
21 within the range of rates within the market for a lawyer with his skill and
22 experience in Los Angeles.

23 8. I understand that the Plaintiff is seeking compensation for Ahilan
24 Arulanantham, a 1999 Yale Law School graduate, at a rate of \$525 per hour.
25 Under the current billing rate schedule at Paul Hastings, an attorney with Mr.
26 Arulanantham's skill and experience would be billed at a rate of \$670 per hour.
27 Based on my overall knowledge of the market for legal services, I believe this rate
28

1 is well within the upper range of rates charged by Los Angeles firms for attorneys
2 with that level of experience, background, and specialized expertise. Accordingly,
3 I believe that the \$525 rate at which Mr. Arulanantham is seeking compensation is
4 well within the range of rates within the market for a lawyer with his skill and
5 experience in Los Angeles.

6 9. I understand that the Plaintiff is seeking compensation for Belinda
7 Escobosa Helzer, a 2000 law school graduate, at a rate of \$500 per hour. Under
8 the current billing rate schedule at Paul Hastings, a lawyer with Ms. Escobosa
9 Helzer's skill and experience would be billed at a rate of \$660 per hour. Based on
10 my overall knowledge of the market for legal services, I believe this rate is well
11 within the upper range of rates for lawyers with that level of experience in the Los
12 Angeles market. Accordingly, I believe that the \$500 rate at which Ms. Escobosa
13 Helzer is seeking compensation is well within the range of rates within the market
14 for a lawyer with her skill and experience in Los Angeles.

15 10. I understand that Plaintiff is seeking compensation for two paralegals,
16 Linda Dominic Ashe and Christian Lezano, both of whom have more than five
17 years experience as paralegals, at a rate of \$175 per hour. Under the current
18 billing rate schedule at Paul Hastings, paralegals with Ms. Ashe and Mr. Lezano's
19 experience would be billed at a rate of \$335 per hour, a rate that is well within the
20 upper range of rates for paralegals with that level of experience in the Los Angeles
21 market. Accordingly, I believe the \$175 rate at which the two paralegals are
22 seeking compensation is at the low end of the range of rates for paralegals with
23 their level of experience in the Los Angeles market.

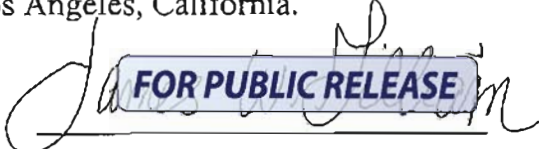
24 11. I understand that Plaintiff is seeking compensation for costs relating
25 to attorney travel (mileage). At Paul Hastings, that cost would be charged to a fee-
26 paying client.

27 I declare under penalty of perjury that the foregoing is true and correct.
28

Case: 09-55215 11/19/2010 Page: 5 of 5 ID: 7553300 DktEntry: 43-7

1 11. I understand that Plaintiff is seeking compensation for costs relating
2 to attorney travel (mileage). At Paul Hastings, those costs would be charged to a
3 fee-paying client.

4 I declare under penalty of perjury that the foregoing is true and correct.
5 Executed November 17, 2010 in Los Angeles, California.

6 
7 **FOR PUBLIC RELEASE**

8 JAMES W. GILLIAM
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Ex. 94

1 DARRELL K. MOORE (SBN 136845)
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9 Los Angeles, CA 90010
Telephone: (213) 487-7211
10 Fax: (213) 487-0242

11 Attorneys for Plaintiffs
REBECCA JONES and BRENT PALMER
12

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 REBECCA JONES and
16 BRENT PALMER,
17 Plaintiffs,
18 v.
19 UPLAND HOUSING AUTHORITY;
DON SWIFT, Executive Director of the
20 HOUSING AUTHORITY OF THE
CITY OF UPLAND in his official
21 capacity,
22 Defendants.

CASE NO.: EDCV 12-2074 VAP
(OPx)

*Assigned for all purposes to the
Honorable Virginia A. Phillips*

**DECLARATION OF AMY
LALLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES**

1 List of counsel for Plaintiffs continued from caption page:

2 AMY P. LALLY, SBN 198555
alally@sidley.com
3 ALEX DOHERTY, SBN 261552
adoherty@sidley.com
4 SIDLEY AUSTIN LLP
5 555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
Telephone: (213) 896-6000
6 Facsimile: (213) 896-6600

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ACTIVE 43044573v.2

DECL. OF AMY LALLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES
Case No. EDCV 12-2074

DECLARATION OF AMY LALLY

1
2 I, Amy Lally, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

3 1. I am a partner at the law firm of Sidley Austin LLP, co-counsel for
4 Plaintiffs Rebecca Jones and Brent Palmer in this action. I have personal knowledge
5 of the facts set forth herein, and, if called as a witness, I could and would testify
6 competently hereto.

7 2. I graduated from Georgetown University Law Center in 1998. In my
8 sixteen years as a litigator, I have litigated a wide variety of civil matters, with a focus
9 on complex commercial litigation and class actions. I have substantial experience, in
10 particular, with Proposition 65 litigation and consumer litigation involving false
11 advertising, marketing and privacy litigation under California’s Unfair Business
12 Practices Act, Consumers Legal Remedies Act, and Song Beverly Credit Card Act.

13 3. Based on my experience litigating consumer class actions under
14 various California and federal statutes, it is my opinion that the issues raised in this
15 action – in particular, those relating to due process and the federal regulations
16 governing the Section 8 housing program – are at least as complex as the issues I
17 litigate for corporate clients on a daily basis.

18 4. I have contemporaneously recorded my time spent litigating this
19 action on behalf of Plaintiffs. Attached hereto as **Exhibit A** is a true and correct
20 summary of my time records for this action.

21 5. As detailed in Exhibit A, my primary responsibilities included
22 supervising the work of the two Sidley Austin associates assigned to this case, Alex
23 Doherty and Lauren McCray, and participating in strategy discussions with Sidley
24 Austin’s co-counsel, *i.e.*, the Western Center on Law and Poverty and Inland Counties
25 Legal Services.

26 6. Attached hereto as **Exhibit B** is a true and correct summary of the
27 expenses incurred by Sidley Austin LLP in the course of litigating this action on
28 Plaintiffs’ behalf.

ACTIVE 43041573v 2

