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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 5 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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1 **DECLARATION OF STEPHEN F. ROHDE**

2 I, Stephen F. Rohde, declare as follows:

3 1. I am an attorney licensed to practice law in the state of California. I make
4 this declaration in support of Plaintiffs’ Motion for Attorneys Fees in the matter of
5 *Rodriguez v. City of Los Angeles*. It is based on my own personal knowledge, and if
6 called as a witness, I could and would testify to the following matters.

7 2. I am a constitutional lawyer, lecturer and writer. I graduated from
8 Northwestern University, with a B.A. in Political Science, in 1966, and from Columbia
9 Law School, with a J.D., in 1969. My admissions to the bar and courts are as follows:
10 Admitted new York Bar (1970), California Bar (1972), US Supreme Court (1976),
11 U.S. Court of Appeals: Second Circuit (1971), Ninth Circuit (1976), Tenth Circuit
12 (1977); U.S. District Court for the Southern District of New York (1971), for the
13 Eastern District of New York (1971), for the Central District of California (1972), for
14 the Southern District of California (1993).

15 3. Since graduating from Columbia Law School, I have dedicated a
16 considerable portion of my legal career to litigation involving constitutional rights,
17 including First and Fourteenth Amendment issues. I have represented numerous
18 writers, journalists, newspapers, bookstores, publishers, protesters, and political
19 activists in a wide array of First Amendment cases, including several published
20 decisions such as *Eberle v. Municipal Court*, 55 Cal. App. 3d 423 (1976); *In Re:*
21 *Hirsch*, 563 F.2d 433 (10th Cir. 1977) (*Silkwood v. Kerr McGee*); *Elysium Institute,*
22 *Inc. v. County of Los Angeles*, 232 Cal. App. 3d 408 (1991); *Cohen v. San Bernardino*
23 *Valley College*, 92 F.3d 968 (9th Cir. 1996); *Keenan v. Superior Court*, 27 Cal. 4th 413
24 (2002) (striking down the California “Son of Sam” law on First Amendment grounds);
25 and *Hunt v. City of Los Angeles*, 638 F.3d 703 (9th Cir. 2011). I have been named to
26 the SuperLawyers list by Los Angeles Magazine in 2006, and 2008-2016. I
27 substantially retired in 2014. In my last attorney fee application, in 2014, I sought and
28 received the rate of \$850 per hour.

1 4. I am familiar with Dan Stormer and Anne Richardson, counsel for the
2 plaintiffs in the case of *Rodriguez v. City of Los Angeles*. I have served on the Board of
3 Directors for the ACLU of Southern California with Ms. Richardson since 2000, and
4 have consulted with her on numerous issues over the years. I am very well aware of
5 Mr. Stormer's expertise and skills as one of Los Angeles' most prominent civil rights
6 litigators. In addition, I am familiar with Olu K. Orange from his work as lead counsel
7 on behalf of Interfaith Communities United for Justice and Peace (ICUJP), an
8 organization for which I served as Chair, when ICUJP was a plaintiff in *Chaudhry v.*
9 *City of Los Angeles*. I understand Mr. Orange was the initial attorney in the instant
10 case, who filed the original complaint. I believe that each of them is of the highest
11 caliber in the Los Angeles civil rights community, and that together they constitute an
12 extraordinary legal team worthy of a multiplier for the reasons set forth herein.

13 5. I am familiar with this case, *Rodriguez v. City of Los Angeles*, and have
14 been watching it since it was first filed in 2011. I am aware that plaintiffs' complaint
15 was styled a putative class action representing a class of alleged gang members who
16 were served with gang injunctions that contained unconstitutional curfew provisions. I
17 am aware that it would be extremely difficult for such individuals to find counsel
18 willing to represent them in such an undertaking on a purely contingency basis. I also
19 understand from personal experience how difficult it is to take cases representing
20 unpopular individuals on a contingency basis, when you have no guarantee whatsoever
21 of being compensated for the hundreds if not thousands of hours that are expended on
22 the case.

23 6. I am also aware, based on my own first-hand experience in the civil rights
24 cases I have handled, how complicated Section 1983 and civil rights cases like this can
25 be and how much effort they require. The law on constitutional claims, damages, and
26 injunctive relief is very complex and always changing. I have reviewed the Orders in
27 this case granting class certification, preliminary injunction, and the Notice to Class
28 Members regarding the settlement of the case. From all that I have seen, counsel in this
case did an astounding job in achieving such a result, obtaining both far reaching

1 injunctive relief in setting up a process for individuals who wish to be removed from
 2 the gang injunctions, and up to \$30 million in job training and education for class
 3 members or their assignees, in addition to \$600,000 in tattoo removal services and the
 4 City’s agreement not to serve such unconstitutional curfew provisions any longer. The
 5 work of plaintiffs’ counsel in this case shows not only a mastery of several different
 6 aspects of civil rights law, but creative and innovative research and analysis in
 7 developing and negotiating the terms of a meaningful and far-reaching settlement,
 8 which serves the public interest.

9 7. I understand that plaintiffs’ counsel in this case are seeking compensation
 10 at the following rates for the following attorneys:

Name	Title/Year Graduation	Rate
Dan Stormer	Attorney, 1974	\$1075
Anne Richardson	Attorney, 1989	\$825
Olu Orange	Attorney, 1998	\$765
Gladys Límon	Attorney, 2003	\$625
Reem Salah	Attorney, 2008	\$525
Cindy Pánuco	Attorney, 2009	\$500
Alisa Hartz, Acrivi Coromelas, Caitlin McLoon	Attorney, 2012	\$375
Brian Olney	Attorney, 2013	\$325
Dexter Rappleye	Attorney, 2014	\$300

25
 26 8. The rates for Mr. Stormer, Mr. Orange, and Ms. Richardson are more than
 27 appropriate for these experienced and well respected civil rights attorneys at the peak
 28 of their careers. The rates sought for the other attorneys in their firms are well within
 the range of appropriate rates for civil rights attorneys in the Los Angeles community

1 with their years' experience. Moreover, I believe that based on the difficulty of the
2 case, the skill of the attorneys, the contingency arrangement and the excellence of the
3 result plaintiffs' counsel obtained, the attorneys would be eligible for an appropriate
4 multiplier.

5
6 I declare under penalty of perjury under the laws of the United States that the
7 foregoing is true and correct.

8 Executed at Los Angeles, California on October ¹⁰, 2016.

9
10 
11 **FOR PUBLIC RELEASE**

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14 Stephen F. Rohde
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4815-5724-0378, v. 2

1 3. I have presented at CLEs on attorney fees on several occasions,
2 including training for attorneys at the Legal Aid Foundation of Los Angeles and
3 the ACLU Foundation of Southern California. My supporting fee declarations
4 have been cited favorably by numerous courts, including, among others, in
5 *Nadarajah v. Holder*, 569 F.3d 906, 916–917 (9th Cir. 2009); *Orantes-Hernandez*
6 *v. Holder*, 713 F.Supp.2d 929, 963–964 (C.D.Cal. 2010); *Torrance Unified Sch.*
7 *Dist. v. Magee*, CV 07-2164 CAS (Rzx) (C.D.Cal. 2008), [2008 U.S. Dist. Lexis
8 95074, 21]; *Atkins v. Miller*, CV-01-01574 DDP (C.D.Cal 2007); *Rauda v. City of*
9 *Los Angeles*, cv 08-3128 CAS (C.D. Cal. 2010); *Jochimsen v. County of Los*
10 *Angeles*, B223518 (2d Dist. June 23, 2011) (unpublished); *Dugan v. County of Los*
11 *Angeles*, cv-11-08145 CAS (C.D. Cal. March 3, 2014); *Xue Lu v. United States*,
12 2014 U.S. Dist. LEXIS 77789 (C.D. Cal. May 23, 2014); *Flores v. City of*
13 *Westminster*, SA-CV-11-0278 (C.D. Cal. 2014); and *Carrillo v. Schneider*
14 *Logistics.*, awarding fees in Circuit Case No. 12-55042 (9th Cir. Apr. 2014),
15 following the affirmance of a preliminary injunction. See 501 Fed. Appx. 713,
16 2012 U.S. App. LEXIS 26601 (9th Cir. Dec. 28, 2012). In *Jochimsen*, the Court
17 held that I was qualified as an expert on reasonable attorney rates in the Los
18 Angeles legal market. Most recently, in *Hiken v. DOD*, 2016 U.S. App. LEXIS
19 16359, Case No. 13-17073 (9th Cir. Sept. 16, 2016), the Circuit held that the lower
20 court erred in rejecting evidence of market rates presented in my declaration and
21 reversed a fee award which significantly reduced the hourly rates sought.
22

23
24 4. My current market rate is \$925 an hour. In 2015, I was awarded
25 attorney fees in the Ninth Circuit at the rate of \$875 an hour in *CPR for Skid Row*
26 *v. City of Los Angeles*, 779 F.3d 1098 (9th Cir. 2015). This followed a decision on
27 fees earlier last year in which the trial court reduced my requested 2014 rate of
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 \$875 to \$750 an hour without supporting evidence of a lower market rate.
2 *Desertrain v. City of Los Angeles*, 10-cv-09053 RGK (C.D. Cal. 2015) [Dkt. 143].
3 Subsequently, I settled the fees in the *Desertrain* case for \$1.1 million dollars,
4 inclusive of the appellate fees, which were calculated with the lodestar rate of \$875
5 an hour. From 2014 to 2015, I kept the same rate because of the district court
6 order in *Desertrain*. In late November of last year, through a settlement
7 conference in the district court, I resolved the fees in *Lavan v. City of Los Angeles*,
8 693 F.3d 1022 (9th Cir. 2012), at the full lodestar rate of \$875 an hour.
9

10 5. Although I often resolve fee awards through settlement, in the past
11 few years, most of my fee awards resulted from contested motions. In 2012 and
12 2013, I did not receive any fee awards; however, in 2012 I billed and was paid my
13 then full rate of \$795 an hour in a case in the Central District in which I was co-
14 counsel for an outside director of a small bank sued by the Federal Deposit
15 Insurance Corporation (“FDIC”) in an attempt to recover investment losses.
16 *Federal Deposit Insurance Company v. Faigin*, cv-12-03448 DDP. This was a
17 highly unusual situation for me and only the first time in about 15 years that I was
18 paid a full hourly rate since I entered private practice 17 years ago, and only the
19 fourth or fifth time I was paid at all on an hourly basis. Nearly all of my cases are
20 done on contingency for low income persons.
21

22 6. In 2008, the federal district court approved the rate of \$695 an hour
23 for me in *Jones v. City of Los Angeles*. 444 F.3d 1118 (9th Cir. 2006), *vacated on*
24 *settlement*, 505 F.3d 1006 (9th Cir. 2007). The fee award was subsequently
25 affirmed by the Ninth Circuit. In 2009 I was awarded fees at \$710 an hour in two
26 contested fee motions. The first award was in *Fitzgerald v. City of Los Angeles*,
27
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 2009 U.S. Dist. LEXIS 34803 (CD Cal. 2009). The second 2009 award was made
2 in a hybrid class action, arising from a police action against a permitted
3 immigration rally in MacArthur Park on May Day 2007, in which I was one of
4 three class counsel appointed by the federal district court. *MIWON v. City of Los*
5 *Angeles*, CV 07-7032 AHM, 2009 U.S. Dist. LEXIS 132270 (C.D. Cal. 6/24/09).
6 Because the Ninth Circuit requires a lodestar cross-check before approving fees as
7 a percentage of the settlement of a class action, Judge Matz specifically approved
8 my rate. In 2010, I was awarded fees at \$725 an hour in a contested fee motion in
9 *Long Beach Area Peace Network v. City of Long Beach*, a First Amendment
10 challenge to a permitting scheme. *See* 574 F.3d 1011 (9th Cir. 2009). A copy of
11 the district court's order awarding fees, bearing the ECF headline, is attached at
12 Exhibit 2.
13

14
15 7. Because I am a sole practitioner, I set my rate by comparison to
16 lawyers of comparable skill and experience at other firms in the Los Angeles area,
17 as I did when I was employed by the ACLU. When I was at the ACLU, I prepared
18 numerous fee motions under federal and state fee-shifting statutes for cases in
19 which the ACLU represented the prevailing party. I was responsible for preparing
20 these motions both for cases where I was directly involved in the underlying
21 litigation, as well as in cases brought by other staff attorneys and volunteer counsel
22 for the ACLU. As part of this assignment, each year I would survey several law
23 firms to obtain information on their current billing rates in order to establish rates
24 for individuals of comparable experience to ACLU staff. I chose firms where the
25 partners were extremely familiar with the experience levels of the various ACLU
26 attorneys and had co-counseled cases with the ACLU. I have continued a similar
27
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DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 practice for fee motions in cases in which I serve as ACLU cooperating counsel
2 and in my private practice.

3
4 8. Since entering private practice, I review billing rates at firms the first
5 time in each year I prepare a fee motion or enter into settlement discussions
6 regarding fees to ascertain current market rates. I make it a point to obtain rate
7 information for attorneys in both larger law firms engaged in complex litigation, as
8 well as smaller boutique civil rights law firms and public interest legal
9 organizations. I regularly review fee motions submitted by, and awards made to,
10 the ACLU Foundation of Southern California, the Mexican America Legal Defense
11 and Educational Fund (“MALDEF”), the Western Center on Law and Poverty,
12 Public Counsel, the Disability Rights Legal Center, Disability Rights Advocates
13 and other public interest groups that litigate in Los Angeles to determine what is
14 being sought and awarded as market rates. Although I frequently file a declaration
15 in support of fee applications filed by these non-profit groups, I am usually not the
16 only declarant.
17

18 9. In all of the fee declarations that I prepare, I apply my understanding
19 of the U.S. Supreme Court decision in *Blum v. Stenson*, 465 U.S. 886 (1984), that
20 “rates charged in private representations may afford relevant comparisons.” *Id.* at
21 895 fn. 11. It is my understanding that the same principle is applied by the
22 California Supreme Court. *See Folsom v. Butte County Ass’n of Govt’s*, 32 Cal.3d
23 668 (1982). I understand this to mean that fees for civil rights lawyers should
24 approximate the rates charged by attorneys of comparable skill, experience and
25 reputation in the relevant legal market, who are engaged in similarly complex
26 litigation, regardless of whether the attorneys work for a non-profit, represent
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DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 individuals on contingency, serve as in-house counsel, or charge a minimal rate for
2 paying clients with the possibility of receiving a market rate award if successful.
3 *See also, Nadarajah v Holder*, 569 F3d at 910, and *Serrano v. Unruh*, 32 Cal.3d
4 621, 643 (1982).

5
6 10. I apply several principles to establish reasonable market rates. First,
7 when available, I look to rates awarded to the attorney in previous cases because I
8 understand that such awards are strong evidence of reasonable market rates. *See*
9 *Chaudhry v. City of Los Angeles*, 751 F3d 1096, 1111 (9th Cir. 2014); *U.S. v.*
10 *\$28,000 in U.S. Currency*, 802 F.3d 1100, 1106 (9th Cir. 2015); *Camacho v.*
11 *Bridgeport Fin., Inc.*, 523 F.3d 973, 976 (9th Cir. 2008). Next, I look to evidence
12 of billing rates by other civil rights attorneys and those engaged in similarly
13 complex business litigation as an approved method of establishing reasonable
14 market rates for civil rights attorneys who do not regularly bill clients on an hourly
15 basis. This approach, approved by both the California and federal courts,
16 recognizes that most civil rights attorneys are not paid hourly for their services at
17 market rates. *See e.g., Pearl, California Attorney Fee Awards*, CEB 2012, §9.109
18 (2012). Third, I apply the rule that the relative “simplicity” or “complexity” of a
19 case is reflected in the efficiency of hours, not the lodestar rate of the attorney. *See*
20 *Van Skike v Director, Office of Workers' Compensation Programs*, 557 F3d 1041,
21 1046 (9th Cir. 2009).
22

23
24 11. I estimate that I review dozens of fee motions, fee awards, and
25 supporting declarations in the course of a year. I obtain this information from
26 recent court orders awarding statutory fees or fees as a discovery sanction. I also
27 subscribe to several legal news websites. If I learn of a case where there is a fee
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 motion, I obtain a copy of the motion, supporting declarations and any fee award
2 from public sources, including the Los Angeles Superior Court website or PACER.

3
4 12. I am informed that fees are being sought for the following attorneys:

<u>PUBLIC COUNSEL</u>		
Attorney	Graduation	Rate
Anne Richardson	1989	\$825
Alisa Hartz	2012	\$375
Dexter Rappleye	2014	\$300

<u>HADSELL, STORMER & RENICK, LLP</u>		
Dan Stormer	1974	\$1075
Anne Richardson	1989	\$825
Gladys Limon	2003	\$625
Reem Salahi	2008	\$525
Cindy Pánuco	2009	\$500
Acrivi Coromelas	2012	\$375
Caitlin McLeon	2012	\$375
Brian Olney	2013	\$325

<u>LAW OFFICES OF OLU ORANGE</u>		
Olu Orange	1998	\$765

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21 13. In my experience, these rates are within the range of reasonable rates
22 for comparably skilled and experienced attorneys in the Los Angeles legal market.
23 As I discuss in more detail below, some of these rates are at the lower end of the
24 civil rights and public interest attorneys rates, and all are well below market rates
25 for attorneys of comparable experience and skill at commercial firms engaged in
26 similarly complex federal litigation, including the rates these firms use in pro bono
27 cases.
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 14. I am personally familiar with the work of most of the attorneys for
2 whom fees are sought by this motion. Over the years, I have co-counseled cases
3 with Dan Stormer, Anne Richardson, Gladys Limon, Reem Salahi and Olu Orange.
4 Ms. Salahi worked with me before she joined Hadsell, Stormer & Renick (HSR).
5 After she joined HSR, we continued to work on a case together. The case,
6 involving 11 students arrested during a protest of Israeli Ambassador Michael
7 Oren's speech at University of California, Irvine, was known as the Irvine 11. Mr.
8 Stormer was also co-counsel on the case. When Ms. Limon was a staff attorney at
9 MALDEF, she was one of my co-counsel in the May Day class action, *MIWON v.*
10 *City of Los Angeles*, discussed in paragraph 6, above.

12 15. Olu Orange was also one of the co-counsel on the *MIWON* case.
13 Although that is the only case we worked together on, I have had considerable
14 opportunity to observe Mr. Orange's skill and experience as an attorney. We are
15 both on the board on the National Lawyers Guild Los Angeles Chapter. He
16 frequently calls me to discuss cases, as he did when he originally saw the gang
17 injunction at issue in this case. In addition, I have participated in moot courts for
18 Ninth Circuit arguments for Mr. Orange. In my opinion, Olu Orange is
19 exceptionally skilled for an attorney practicing only 18 years. Moreover, I have
20 litigated gang injunction issues, so I know what is required to reach the degree of
21 success he achieved in this instance. Approximately 14 years ago, I was counsel
22 for individuals placed under a gang injunction related to MS-13. Although I was
23 able to get some of the language in the injunction modified, I was unsuccessful in
24 lifting the injunction. I also consulted with the ACLU when they began the
25 challenge to the Orange County gang injunction at issue in *Vasquez v. Rackauckas*,
26 734 F.3d 1025 (9th Cir. 2013).
27
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 16. I have considerable professional experience with Anne Richardson
2 and Dan Stormer. The first time that I recall co-counseling a case with Mr.
3 Stormer was in 1986, when we were part of the legal team representing eight
4 individuals arrested for alleged violations of the McCarthy-era McCarran-Walter
5 Act, criminalizing entry into the United States by individuals who subscribed to
6 “world communism.” The case was commonly known as “the LA Eight.” Most
7 recently, Mr. Stormer, along with Barry Litt, Paul Hoffman and me, was appointed
8 by this Court as class counsel in *Aichele v. City of Los Angeles*, 314 F.R.D. 476
9 (C.D. Cal. 2013). I have also been present at CLEs that Dan Stormer has presented
10 on trial skills. In my experience as a member of the civil rights and public interest
11 bar in Los Angeles for 38 years, he enjoys a reputation as a highly skilled and
12 experienced attorney.
13

14 17. I first became acquainted with Ms. Richardson in 1987, when she was
15 a law clerk at the ACLU of Southern California and I was a staff attorney there.
16 When she returned to Los Angeles after law school and was an attorney at Litt &
17 Stormer, I became familiar with her work as a civil rights attorney working on
18 many complex matters in the same arenas that I was working in. Later, we were
19 cocounsel, along with the ACLU, in *Fitzgerald v. City of Los Angeles*, 485 F.
20 Supp. 2d 1137 (C.D. Cal. 2007), in which we sought and were granted an
21 extension of an injunction initially entered in 2003 against the LAPD’s “stop and
22 frisk” policy on Skid Row. *See Fitzgerald v. City of Los Angeles*, 2003 U.S. Dist.
23 LEXIS 27382, CV 03-01876 NM (RZx) (C.D. Cal. 2003). In my experience, Ms.
24 Richardson is widely regarded as a highly skilled attorney.
25
26

27 18. I also know Cindy Pánuco, Alisa Hartz, Dexter Rappleye, and Brian
28 Olney, although I know each more by reputation than direct work experience. I

1 have known Dexter Rappleye and Brian Olney since they were law students. Both
2 were summer law clerks with Paul Hoffman. When Mr. Rappleye was a summer
3 clerk with Mr. Hoffman, he prepared research memos on issues in several of the
4 cases I co-counseled with Paul Hoffman at the time, including what later was filed
5 as *Aichele*.

6
7 19. The 2016 rates are warranted because the appropriate measure of the
8 lodestar is the current market rate for an attorney of comparable skill, experience
9 and reputation. Several courts have recognized that annual increases in rates may
10 well be more than any increase in the cost-of-living. For example, in *Charlebois v.*
11 *Angels Baseball, LP*, 2012 U.S. Dist. LEXIS 91069, cv 10-0853 DOC (C.D. Cal.
12 May 30, 2012), Judge Carter rejected the defense's argument that the rate sought
13 by Mr. DeSimone of Schonbrun, DeSimone, Seplow, Harris & Hoffman should be
14 limited to what he was awarded in prior years. "[C]ourts routinely recognize that
15 fee rates increase over time based on a variety of factors." 2012 U.S. Dist. LEXIS
16 91069, *24. Judge Carter also cited to the decision by former federal Judge
17 Collins in *Parker v. Vulcan Materials Co. Long Term Disability Plan*, No. EDCV
18 07-1512 ABC (OPx), 2012 WL 843623, *7 (C.D. Cal. Feb. 16, 2012), approving
19 an increase of approximately 10 percent in one year because "[i]t is common
20 practice for attorneys to periodically increase their rates for various reasons, such
21 as to account for expertise gained over time, or to keep up with the increasing cost
22 of maintaining a practice."

23
24 20. This same principle was also applied by Judge Wilken of the Northern
25 District of California in *Armstrong v. Brown*, 94-cv-002307 CW (N.D. Cal. Aug. 8,
26 2011) Dkt. #1919. Responding to the State's argument that the proposed increases
27 in rates from 2008 to 2010 for plaintiffs' attorneys were too great, the Court noted
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 that the 5 percent increase in rates each year “reflects only the across-the-board rise
2 in firms’ overall rates, not the increase in individual attorney’s hourly rates for the
3 additional experience accrued over the two-year period.” *Id.* at *5. Among the
4 evidence Judge Wilken cited to for this point was the declaration of Bingham
5 McCutcheon attorney Geoffrey Holtz, pro bono counsel in *Armstrong*, and state
6 regulations providing for “merit” increases beyond the annual salary schedule
7 increase. *Id.* The net result in *Armstrong* was an increase of more than one-third
8 for associates in two years.
9

10 21. As further examples of courts approving significant annual increases
11 in rates, I have provided a true and correct copy of the order in *Avila v. Los*
12 *Angeles Police Department*, cv-11-01326 SJO (C.D. Cal. Aug. 2, 2012). *See*
13 Exhibit 3. There, Judge Otero concluded that a reasonable 2012 rate for Matthew
14 McNicholas, a 1997 graduate, was \$700 an hour. Judge Otero rejected the defense
15 assertion that Mr. McNicholas should only receive \$650 an hour, noting that rates
16 increase as attorneys gain more skills. *Id.* at pp.3-4. Significantly, the approved
17 2012 rate of \$700 an hour for Mr. McNicholas supports the reasonableness of the
18 rate now sought for Olu Orange. Mr. Orange has three years more experience now
19 than Mr. McNicholas had when he was awarded \$700 an hour. The difference of
20 \$65 an hour represents an annual increase of less than 3 percent a year.
21

22 22. The pool of civil rights lawyers who graduated law school in the early
23 1970s, when Dan Stormer did, and are still practicing is significantly smaller than
24 those who graduated even in 1978, when I graduated. I have relied more heavily
25 on the rates sought or approved for attorneys at large firms who were engaged in
26 pro bono civil rights litigation, usually with a public interest organization, to
27 support the reasonableness of Dan Stormer’s requested rate of \$1075 an hour. I
28

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 have attached several declarations at Exhibit 10 and 11, providing commercial firm
2 rates in addition to the Sullivan & Cromwell rates from *Franco-Gonzalez*. The
3 Sullivan & Cromwell rates are set out in paragraph 37 and Exhibit 12, the
4 declaration of Michael Steinberg, a 1986 law graduate and a partner at the firm.
5 He attested that he applied his customary 2015 billing rate of \$1,040 an hour. Mr.
6 Stormer has 13 years more experience than Mr. Steinberg had in 2015. The other
7 awards to pro bono firm counsel are discussed in paragraphs 40 and 41, below. I
8 note that Mr. Stormer’s requested rate is approximately 23 percent above the rate
9 of \$875 approved for me by the Ninth Circuit in 2015. With the five additional
10 years of experience Dan Stormer has now, this is less than a five percent annual
11 increase.
12

13 23. The first fee award I discuss is the class-action *Communities Actively*
14 *Living Free and Independent v. City of Los Angeles*, cv 09-0287 CBM (C.D. Cal.
15 June 10, 2013) [Document #255]. A true and correct copy of the order in this case
16 is attached at Exhibit 4. It is important to note that, although the order approving
17 fees issued in mid-2013, the rates were 2012 rates as the settlement had been
18 reached almost a year earlier but was delayed in being approved by the local
19 government entities that were defendants in the case. *Id.* at ¶ 13.
20

21 24. In *Communities Actively Living*, the Court approved rates for
22 attorneys at Disability Rights Legal Center and Disability Rights Advocates,
23 located in Northern California. Ex. 4, ¶8. The chart below shows the approved
24 rate and graduation year for comparably experienced attorneys;this instant matter.

Attorney	Graduation Year	Rate	Cite
Laurence Paradis	1985	\$800	Ex. 4 ¶6, p.5, l.14
Michelle Uzeta	1992	\$700	Ex. 4 ¶6, p.5, l.8

1	Shawna Parks	1999	\$665	Ex. 4 ¶5, p.4, l.11
2	Katherine Weed	2002	\$600	Ex. 4, ¶6, p.5, l.2
3	Jennifer Lee	2003	\$550	Ex. 4, ¶6, p.6, l.13
4	Matthew Strugar	2004	\$525	Ex. 4, ¶6, p.6, l.11
5	Mary-Lee Smith	2005	\$555	Ex. 4 ¶5, p.4, l.17
6	Kara Janssen	2010	\$330	Ex. 4, ¶6, p.6, l.7

7 25. Anne Richardson has the same amount of experience in 2016 as
8 Laurence Paradis had in 2012, when the fee award was approved in Exhibit 4. She
9 seeks a rate that is only 3 percent above Mr. Paradis' 2012 rate of \$800 an hour.
10 Allowing for even a small increase of the base rate for inflation, this is effectively a
11 stand-still rate. Olu Orange has five more years of experience than Shawna Parks
12 had in 2012, when she was approved at \$665 an hour as a 1999 law graduate. Mr.
13 Orange's requested rate of \$765 represents only a \$20 an hour annual increase.

14 26. Some of the rates sought by this motion are below the comparable
15 rates approved in 2012 in Exhibit 4. For example, Kara Janssen, who had two
16 years of experience in 2012, was approved at \$330 an hour. In the present fee
17 motion, plaintiffs' counsel is requesting 10 percent less, or \$300 an hour, for
18 Dexter Rappleye who now has two years of experience. The same is true for Reem
19 Salahi and Cindy Pánuco at HSR: with eight and seven years of experience,
20 respectively, they are billing at the same rate approved for Matthew Strugar (8
21 years) and 10 percent below the rate approved for Mary-Lee Smith (7 years). With
22 four more years of experience than Jennifer Lee had in 2012, when she billed at
23 \$550 an hour, Gladys Limon's requested rate of \$625 an hour represents an annual
24 increase of less than two percent over the rate approved for Lee.

25 27. I also reviewed the class-action fee award in *Charlebois v. Angels*
26 *Baseball, Inc.*, 2012 U.S. Dist. LEXIS 91069, cv-10-0853 DOC (C.D. Cal. May,
27 2012). The lead firm in the case was Schonbrun, DeSimone, Seplow, Harris &
28 Hoffman. I am very familiar with all of the attorneys at the firm, worked with Paul
Hoffman when he was the legal director of the ACLU Foundation of Southern

DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1 California, and co-counsel cases with them regularly. As noted in the decision, I
2 provided a supporting declaration on market rates in the case. *Id.* at p.7. In
3 *Charlebois*, the Court approved the following rates:

4 Attorney	Graduation Year	Rate	Cite
5 V. James DeSimone	1985	\$695	p.4
6 Michael Seplow	1990	\$630	p.4
7 David Sarnoff	2005	\$460	p.5
8 Amanda Canning	2006	\$450	p.4
9 Menaka Fernando	2010	\$325	p.5

10
11 28. Ms. Richardson has the same amount of experience as Mr. DeSimone
12 had in 2012 in the *Charlebois* fee award. Her 2016 rate of \$825 represents an
13 annual increase of 4.6 percent. Ms. Pánuco’s requested rate of \$500 an hour is
14 slightly more than a two percent annual increase over the rate approved for David
15 Sarnoff, who had the amount of experience in 2012 as Ms. Pánuco has now. The
16 \$325 an hour approved for Menaka Fernando in 2012 is more than is being sought
17 now for Dexter Rappleye, with the same amount of experience as Ms. Fernando
18 had in 2012. Moreover, the rate approved for Ms. Fernando in 2012 is the same
19 rate now sought for Brian Olney, who has an additional year of experience.

20
21 29. I also reviewed the class action award in *G.F. v. Contra Costa County,*
22 *et al.*, 2015 U.S. Dist. LEXIS 159597, C-13-03367 MEJ (N.D. Cal. Nov. 25,
23 2015). The case was brought by Disability Rights Advocates (“DRA”), one of the
24 counsel in Exhibit 4, and two other firms. Although the case was brought in the
25 Northern District, in my experience, attorneys in Southern California and San
26 Francisco apply the same rates statewide in their litigation. The parity of rates in
27 these two legal markets was noted in *Minor v. Christie*, 2011 U.S. Dist. LEXIS
28

1 9219, *22 [C-08-0545] (N.D. Cal. 2011) (“While the relevant community is San
2 Francisco, and not Los Angeles or New York where the lawyers [in Minor]
3 predominantly practice, the parties agree that the Los Angeles, San Francisco, and
4 New York communities have comparable community rates.”). The same is true for
5 civil rights lawyers who practice statewide. *See e.g.*, Exhibit 5 (Declaration of
6 Paradis, *LAUSD v. Garcia*, 09-cv-9289 VBF (C.D. Cal.), Ninth Circuit Case No.
7 10-55879), attesting that rates in the Central District are “generally comparable” to
8 those in San Francisco and that “DRA does not make a distinction in its rates
9 between Southern and Northern California cases.” Ex. 5 ¶ 17, lines 7-10.

11 30. In *G.F.*, the Court approved class fees but did not set out individual
12 rates in the order. 2015 U.S. Dist. LEXIS 159597, *33-35. I have provided the
13 underlying declarations filed in support of the fee request. Attached at Exhibit 6 is
14 a true and correct copy of the declaration of Mary-Lee Smith of DRA, setting out
15 the 2014 rates for DRA attorneys as set forth below in paragraph 12:

Attorney	Graduation Year	Rate
Laurence Paradis	1985	\$845
Shawna Parks	1999	\$690
Mary-Lee Smith	2005	\$580
Rebecca Williford	2009	\$405
Kara Janssen	2010	\$370
Ann Kelsey	2012	\$325

24 31. The rates sought by this motion are comparable to the rates approved
25 in Exhibit 5. In 2014, Shawna Parks had 12 years less experience than Anne
26 Richardson has now. The \$130 an hour differential in their rates represents barely
27 \$10 an hour annual differential. Ms. Parks’ approved rate of \$690 an hour also
28

1 supports the reasonableness of the rate sought by Olu Orange, who has three years
2 of experience more than Ms. Parks had in 2014. The 10 percent difference in their
3 rates is just slightly more than a three percent annual increase. The rates for the
4 less experienced attorneys are also comparable in this motion and in Exhibit 6. For
5 example, Kara Janssen a 2010 law graduate, was approved at \$370 an hour in
6 2014. Acrivi Coromelas and Caitlin McLeon, both with four years of experience,
7 are requesting \$375 an hour for 2016. Similarly, Ann Kelsey, with 2 years
8 experience in 2014, was approved at a rate \$25 an hour higher than the rate now
9 sought for Dexter Rappleye, also with two years of experience. Ms. Kelsey’s 2014
10 rate of \$325 an hour is the same rate now sought for Brian Olney, who has one
11 additional year of experience.
12

13 32. I note that in Exhibit 6, Mr. Paradis’ rate increased just under five
14 percent over two years from 2012 to 2014. In my opinion, this is a below market
15 level of annual increases. To contrast, my own rate has increased \$130 an hour, or
16 16 percent, since 2012.
17

18 33. The rates sought and awarded in disability rights cases are consistent
19 with the market rates for other types of similarly complex civil rights litigation.
20 For example, in 2014 in *Rodriguez v. County of Los Angeles*, cv-10-6342 CBM,
21 the Court awarded fees to the law firm of Kaye, McLane, Bednarski & Litt
22 (“KMBL”) in an excessive force case involving several inmates at the Los Angeles
23 County jail. A true and correct copy of the order in *Rodriguez* is attached at
24 Exhibit 7. The 2014 approved fees for KMBL, set forth at p.14, are as follows:

Attorney	Graduation Year	Rate
Barry Litt	1969	\$975
Ronald Kaye	1988	\$775

25
26
27
28
DECLARATION OF CAROL A. SOBEL IN SUPPORT OF MOTION FOR ATTORNEY FEES

1	David McLane	1986	\$775
2	Kevin LaHue	2004	\$600
3	Caitlin Weisberg	2008	\$500

4 34. The rates approved in *Rodriguez* support the reasonableness of the
5 rates sought by this motion. For example, Ron Kaye, a 1988 law graduate, was
6 awarded fees at \$775 an hour in 2014. Anne Richardson, with one more year of
7 experience, requests \$825, which represents an annual increase of just slightly over
8 three percent from Mr. Kaye’s 2014 rate. The rate for Reem Salahi, a 2008 law
9 graduate, is only five percent above the rate approved two years ago in *Rodriguez*
10 for Caitlin Weisberg, also a 2008 law graduate.

11 35. Another example of comparable market rates is provided in *Franco-*
12 *Gonzalez v. Holder*, 10-cv-02211-DMG (C.D. Cal. 2015) (Doc. 838). Attached at
13 Exhibit 8 is a true and correct copy of the declaration I submitted in support of the
14 market rates for attorneys from the ACLU, several other public interest firms and
15 pro bono counsel from Sullivan & Cromwell. Based on my review of the case
16 docket on PACER, I understand that the parties settled the fees after the motion
17 was filed and that this Court then approved the fees in the course of approving the
18 class-action settlement.

19 36. Among those for whom fees were sought in *Franco* was a preeminent
20 disability rights litigator, James Preis of Mental Health Advocacy Services, at the
21 2014 rate of \$850 an hour. Mr. Preis and I graduated law school the same year and
22 I have known him for approximately 36 years. *Franco* involved market rates fees
23 under the Rehabilitation Act and EAJA enhanced rates. Ex. 8, pp. 3-5. The
24 Rehabilitation Act rates for the primary public interest attorneys are as follows:
25

26	Attorney	Graduation Year	Rate
----	----------	-----------------	------

1	James Preis	1978	\$875
2	Judy Rabinovitz	1985	\$825
3	Judy London	1990	\$775
4	Matt Adams	1998	\$710
5	A. Arulanantham	1999	\$690
6	Victoria Lopez	2001	\$640
7	Sean Riordan	2007	\$535
8	Marisol Orihuela	2008	\$510
9	Victor Leung	2009	\$490
10	Thea Bernas	2011	\$450
11	Sofia Corona	2014	\$340

12
13 37. The rates for pro bono counsel Sullivan & Cromwell were
14 substantially higher. Michael Steinberg, the partner assigned to the case and a
15 1986 law graduate, applied his 2015 customary billing rate of \$1040 an hour. Ex.
16 8, p.3. Other Sullivan & Cromwell rates are set forth below:

17	Attorney	Graduation Year	Rate
18	Shawn Lichaa	2007	\$865
19	Asel Aliyasova	2008	\$850
20	Alexa Lawson-Remer	2009	\$800
21	Michael Murtagh	2010	\$750

22
23 38. The reasonableness of the rate requested by Olu Orange is supported
24 by the 2012 rate of \$700 an hour to Matthew McNicholas in *Avila*, a single
25 plaintiff employment discrimination case. See Exhibit 3. It is also supported by
26 the 2015 rate of \$710 an hour to Matt Adams in *Franco-Gonzalez*. I provided a
27 supporting fee declaration in *Franco-Gonzalez*. See Exhibit 8. Although I
28

1 understand from reviewing the Court's docket that the parties reached a settlement
2 of the attorney fees after the motion was filed, the court, nonetheless, reviewed the
3 propriety of the fees in approving the final settlement of the class action. The
4 requested rate for Mr. Orange is also supported by the 2016 award of \$790 an hour
5 to Rob Hennig, a 1994 law graduate, in an employment discrimination case in Los
6 Angeles Superior Court. A true and correct copy of the fee award to Mr. Hennig,
7 affirming his rate, is attached at Exhibit 9.
8

9 39. The requested rates are also well more than 25 percent below the rates
10 applied in civil rights cases by comparably experienced attorneys at commercial
11 firms serving as pro bono counsel. To illustrate this point, in *Los Angeles Unified*
12 *School District v. Garcia*, 41 F.3d 922 (9th Cir. 2014), DRLC's co-counsel at
13 Milbank, Tweed, Hadley & McCoy, LLP, Hannah Cannom, also filed a declaration
14 in support of t fee motion. A copy of the Cannom declaration, with the ECF filing
15 header, is attached at Exhibit 10. Attorney Cannom, a 2006 graduate, averred that
16 her rate for 2014 was \$800 an hour. Ex. 10, ¶¶ 2, 6. She also averred that the 2014
17 rates for the other Milbank Tweed attorneys in the case were \$1,135 an hour for
18 Daniel Perry, a partner then with 15 years of experience (¶7); \$900 an hour for
19 Delilah Vinzon, of counsel then with 11 years of experience (¶8); and \$760 an hour
20 for a 2008 graduate (¶10). In *Franco-Gonzalez*, Michael Steinberg, the Sullivan &
21 Cromwell partner on the case and a 1986 law graduate, applied his 2015 customary
22 billing rate of \$1040 an hour. Ex. 8, p.3.
23

24 40. In *Jones v. Upland Housing Authority*, EDCV 12-2074 VAP (C.D.
25 Cal. Feb. 24, 2014), Sidley Austin served as co-counsel with public interest
26 attorneys at the Western Center on Law and Poverty. Amy Lally, a partner at the
27 firm who worked on the case, submitted a declaration in support of the plaintiffs'
28

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1 motion for attorney fees. A true and correct copy of the Lally declaration is
2 attached at Exhibit 11. Ms. Lally attested that she is a 1998 law graduate and that
3 her customary billing rate was \$700 an hour for 2012 and \$825 for 2014. Ex. 11,
4 ¶7. This is an increase of almost 20 percent in two years. With only 16 years of
5 experience, slightly more than a third of the time Mr. Stormer has been practicing,
6 Ms. Lally's 2014 rate of \$825 an hour was only 30 percent below Mr. Stormer's
7 requested rate. No doubt, Sidley's rates have increased significantly in the past
8 two years. In fact, since Sidley's rate for Ms. Lally increased 20 percent in two
9 years, I would expect her current rate is higher than Mr. Stormer's.
10

11 41. As my résumé demonstrates, I have taught at Loyola Law School
12 since 2007. I also supervised staff attorneys at the ACLU and the ACLU law clerk
13 program when I was a Senior Staff Counsel. Approximately 30-40 law students
14 were externs each summer. Many of these students now do public interest work,
15 whether as staff or pro bono counsel. In addition, I have supervised large-scale pro
16 bono programs involving young lawyers and law students. For example, in the
17 1980s, I worked with public interest lawyers in Atlanta and coordinated
18 representation for more than 600 Mariel Cubans who were transferred to the
19 federal prisons at Lompoc and Terminal Island for due process hearings after the
20 Atlanta Federal Penitentiary and another facility were destroyed. A decade ago, I
21 also coordinated attorneys at private firms and public interest groups in
22 representing approximately 5,000 students across Southern California who were
23 criminally charged with truancy and other offenses when they walked out of school
24 to protest then-pending federal immigration legislation. More recently, I have
25 coordinated pro bono representation for individuals arrested in large
26 demonstrations in the City. Over 35 years, I have co-counseled cases with dozens
27
28

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1 of attorneys at the ACLU, other public interest law groups and private law firms.
2 Currently, I help coordinate volunteer law students and attorneys at two monthly
3 clinics that provide pro bono representation for homeless individuals issued so-
4 called “quality of life” citations on Skid Row and in Venice. All of this has
5 provided me with extensive and unparalleled experience with which to evaluate the
6 skill and experience of attorneys in the Los Angeles legal market. Moreover, many
7 members of the current civil rights bar in Los Angeles participated in the
8 externships and activities described above.
9

10 42. In my experience over the last nearly 40 years, there are very few
11 attorneys in Los Angeles who would be willing and capable of taking on a case
12 such as this. Other than the well-funded public interest legal organizations, there
13 are very few private civil rights lawyers who handle cases of this magnitude.
14 Based on my own experience with the MS-13 gang injunction and what I learned
15 through preparing supporting fee declarations at each stage of the litigation about
16 the amount of time that the ACLU spent prosecuting the Orange County gang
17 injunction at issue in *Vasquez*, I am aware of what is required to achieve the result
18 that Plaintiffs’ counsel did in this instance. In light of that, I would not have taken
19 on this case in view of my own caseload over the past several years.
20

21 43. I understand that Plaintiffs are requesting a multiplier on their fees
22 under California fee-shifting law. A state-law multiplier is available to plaintiffs
23 who succeed on both federal and state claims. *Chaudhry v. City of Los Angeles*,
24 2014 U.S. App. LEXIS 9208, *39-40 (9th Cir. 2014). In this instance, plaintiffs’
25 counsel achieved exceptional results in a highly undesirable case. *See Vizcaino v.*
26 *Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002).
27
28

1 44. *Ketchum v. Moses*, set the rules for a multiplier under California law.
2 A multiplier is assessed by “(1) the novelty and difficulty of the questions
3 involved, (2) the skill displayed in presenting them, (3) the extent to which the
4 nature of the litigation precluded other employment by the attorneys, [and] (4) the
5 contingent nature of the fee award.” 24 Cal. 4th at 1132. “A contingent fee must
6 be higher than a fee for the same legal services paid as they are performed. The
7 contingent fee compensates the lawyer not only for the legal services he renders
8 but for the loan of those services.” *Id.* at 1132-33, citing Posner, *Economic*
9 *Analysis of the Law*, 534, 567 (4th ed. 1992).

11 45. In my experience, a substantial multiplier of at least two times the
12 lodestar is expected to account for contingent risk and the complexity of the case,
13 among other factors. *See e.g., Fadhl v. City and County of San Francisco*, 859
14 F.2d 649, 650 (9th Cir. 1988) (“contingent fees that yield approximately two times
15 the ordinary hourly rate for time expended is the return expected by lawyers in
16 the relevant market”); *Wing v. Asarco, Inc.*, 114 F.3d 986, 989 (9th Cir. 1997) (2.0
17 multiplier for the risk of loss); *Crommie v. California Public Utilities*
18 *Commission*, 840 F. Supp. 719 (N.D. Cal. 1994), *aff 'd sub nom, Mangold v.*
19 *California Public Utilities Commission*, 67 F.3d 1470 (9th Cir. 1995)
20 (contingent-risk enhancement of 2.0 under California substantive law); *Chabner*
21 *v. United of Omaha Life Insurance Company*, 1999 WL 33227443 (N.D. Cal.
22 1999) (2.0 multiplier under Ca. Civ. Code §52.1).

24 I declare under penalty of perjury that the foregoing is true and correct.
25 Executed this 13th day of October, 2016 at Los Angeles, California.

26 **FOR PUBLIC RELEASE**
27 CAROL A. SOBEL
28

CAROL A. SOBEL

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Employment:

LAW OFFICE OF CAROL A. SOBEL Solo civil rights law firm.	APRIL, 1997 TO PRESENT
SENIOR STAFF COUNSEL <i>ACLU Foundation of Southern California</i>	1990 TO APRIL, 1997
Responsible for conducting civil rights and civil liberties litigation in state and federal courts in California; supervise litigation by ACLU volunteer counsel and other ACLU legal staff.	
STAFF ATTORNEY <i>ACLU Foundation of Southern California</i>	1985 TO 1990
Civil liberties litigation, primarily in the areas of Establishment Clause and Free Exercise violations, as well as other First Amendment rights.	
ASSOCIATE DIRECTOR <i>ACLU Foundation of Southern California</i> <i>American Civil Liberties Union of Southern California</i>	1979 TO 1985
Under the direction of the Executive Director, responsible for administration of two non-profit organizations, including working with Boards of Directors on development of policy on civil liberties issues. Engaged in litigation and assisted Legal Director in coordination and supervision of pro bono attorneys.	
DEVELOPMENT DIRECTOR <i>ACLU Foundation of Southern California</i> <i>American Civil Liberties Union of Southern California</i>	1977 TO 1979
Responsible for conducting a variety of fundraising efforts to meet a million-dollar plus annual budget for a 501(c)(3) and a 501(c)(4).	

Admitted to Practice:

California Supreme Court	November, 1978
United States Supreme Court	September, 1991
Ninth Circuit Court of Appeals	August, 1986
U.S.D.C. Central District of California	February, 1986
U.S.D.C. Eastern District of California	June, 1990

Litigation Experience:

Federal courts: (Partial listing of published opinions and significant cases)

CPR for SKID ROW,
779 F.3d 1098 (9th Cir. 2015)
Partial reversal of summary judgment in favor of the Defendant and holding that California Penal Code §403 could not lawfully be applied to criminalize the expressive activity of the Plaintiffs for protesting on Skid Row.
(Lead counsel and argued on appeal)

Desertrain v. City of Los Angeles

754 F.3d 1114 (9th Cir. 2014)

Reversal of summary judgment in favor of the Defendants and holding that Los Angeles Municipal Code §85.02, prohibiting parking a vehicle on public streets or parking lots any time of day or night if a person "lives" in the vehicle, is unconstitutionally vague.

(Lead counsel and argued on appeal)

Lavan v. City of Los Angeles

693 F.3d 1022 (9th Cir. 2012), affirming grant of preliminary injunction 797 F.Supp.2d 1005 (C.D. Cal. 2011)

Preliminary injunction barring City from confiscating and immediately destroying the property of homeless individuals on Los Angeles' Skid Row.

(Lead Counsel)

Long Beach Area Peace Network v. City of Long Beach

522 F.3d 1010 (9th Cir. 2008), as amended July 24, 2009

Upholding and reversing in part on appeal a decision of the district court granting Plaintiffs' request for a preliminary injunction to enjoin a municipal parade ordinance that included vague permit standards setting, *inter alia*, advance-notice requirements police charges based on the past unlawful conduct of third parties without adequate standards to limit the discretion of public officials charged with implementing the parade ordinance.

(Lead counsel)

Fitzgerald v. City of Los Angeles

485 F.Supp.2d 1137 (CD CA 2008)

Extending injunction against police sweeps of homeless persons on Los Angeles' Skid Row on the grounds of searching for parole and probation violations. See below for discussion of permanent injunction in 2003.

(Co-Counsel)

Multi-Ethnic Immigrant Worker Organizing Network (MIWON) v. City of Los Angeles

246 F.R.D. 621 (C.D. Cal. 2007)

Order granting class certification in challenge to police assault on a lawful assembly of immigrant rights supporters by the Los Angeles Police Department on May Day, 2007.

(Class Co-Counsel)

Edward Jones, et al., v. City of Los Angeles,

444 F.3d 1118 (9th Cir. 2006), vacated pursuant to settlement 505 F.3d 1006 (2007)

Challenge to City of Los Angeles Municipal Code §41.18(d), prohibiting sitting, lying or sleeping on any street or sidewalk anywhere in the City at any time of day or night. Plaintiffs, all of whom are homeless persons, brought an 8th Amendment as-applied challenge to their arrests and citations for violating the ordinance when there was no available adequate shelter.

(Co-counsel)

Terry Tipton-Whittingham, et al. v. City of Los Angeles

316 F.3d 1059 (9th Cir. 2003)

Challenge by City of Los Angeles to interim fee award granting plaintiffs' fees as "catalysts" under state civil rights fee shifting statutes. Following oral argument, the Ninth Circuit certified issue of continued availability of "catalyst" fees under California law after adverse decision by the United States Supreme Court rejecting catalyst fee doctrine under federal law absent express legislative authorization. Certified for hearing before the California Supreme Court and ultimately upheld the catalyst fee doctrine under California law.

(Co-counsel; argued in Ninth Circuit)

Fitzgerald v. City of Los Angeles

2003 U.S. Dist. LEXIS 27382 (CD CA 2003)

Permanent injunction enjoining Fourth Amendment violations by the Los Angeles Police Department (LAPD). The injunction prevents the LAPD from engaging in stops of homeless persons for parole and probation sweeps on Skid Row without reasonable suspicion to believe that specific individuals are on parole or probation and subject to a search condition, or that the individual has engaged in, or is about to commit a crime.

(Lead counsel)

Khadem v. South Orange County Community College District

194 F.Supp.2d 1011 (C.D. CA 2002)

First Amendment facial challenge invalidating college policy regulating time, place and manner of student speech on campus.

(Lead counsel)

Mardi Gras of San Luis Obispo v. City of San Luis Obispo

189 F. Supp.2d 1018 (C.D. Cal. 2002)

Preliminary injunction to enjoin a municipal parade ordinance that required lengthy advance-notice requirement and permitted high insurance and police charges based on the past unlawful conduct of third parties without adequate standards to limit the discretion of public officials charged with implementing the parade ordinance.

Bauer v. Sampson

261 F.3d 775 (9th Cir. 2001)

First Amendment challenge to disciplinary action against college professor for publication of an alternative newsletter criticizing elected and appointed public officials and disclosing wrongdoing by college officials and personnel. The college sought to discipline the professor for violating the district's policies on discrimination and work-place violence. The policies were declared unconstitutional as applied to the professor's speech.

H.C. v. Koppel

203 F.3d 610 (9th Cir. 2000)

Dismissal of federal civil rights action filed in federal court against state court judge and appointed counsel for minor in family law matter. Circuit held that Younger Abstention applied and non-custodial parent had adequate state court remedy.

Justin v. City of Los Angeles

2000 U.S. Dist. LEXIS (CD Cal. 2000)

Class action to enjoin police sweeps of homeless population on Los Angeles' Skid Row. Permanent injunction stipulated to in settlement following certification of the injunctive relief class.

(Lead counsel)

Los Angeles Alliance for Survival, et al. v. City of Los Angeles

987 F. Supp. 819 (1997); 157 F.3d 1162 (9th Cir. 1998); on certification to the California Supreme Court, 22 Cal.4th 352 (2000); 224 F.3d 1076 (9th Cir. 2000)

Injunction issued in challenge to municipal ordinance barring so-called "aggressive solicitation" in broad areas of traditional public fora. Preliminary injunction entered by district court based on California Constitution. On appeal, the Ninth Circuit certified the California Constitution question to the California Supreme Court. Following decision by the California Supreme Court, the Ninth Circuit upheld the original injunction.

(Co-counsel)

Service Employees International Union 660 v. City of Los Angeles

114 F. Supp.2d 966 (C.D. Cal. 2000)

Challenge to the "no-protest zone" at the Democratic National Convention in Los Angeles in 2000, as well as a preliminary injunction to enjoin the City of Los Angeles parade ordinance.

(Co-counsel)

United States v. Wunsch

54 F.3d 579 (9th Cir. 1995); 84 F.3d 1110 (9th Cir. 1996) (reargument)

First Amendment challenge to discipline of male attorney for "gender bias" in sending note to female Asst. U.S. Attorney after she successfully moved to disqualify him as defense counsel in a criminal case. Ninth Circuit invalidated the penalty and declared unconstitutional California's "offensive personality" regulation on attorneys' professional conduct. (Argued and briefed on appeal).

American Jewish Congress v. City of Beverly Hills

65 F.3d 1539 (9th Cir. 1995); 90 F.3d 379 (9th Cir. 1996) (en banc)

First Amendment challenge to display of a religious symbol on public property and to permit scheme for expressive activities in public fora in the City of Beverly Hills. The en banc panel held the permit scheme unconstitutional and found that a preference had occurred for the display of a particular religious symbol. The en banc decision was unanimous. (Argued and briefed on appeal)

Baca v. Moreno Valley Unified School District

936 F. Supp. 719 (C.D. Cal. 1996)

First Amendment challenge to school board regulations preventing speakers from making disparaging remarks about public employees during public board meetings.

Wallin v. City of Los Angeles,

1194 U.S. App. LEXIS 2343 (9th Cir. 2004)

Circuit dismissed appeal of defendant City and law enforcement officers from denial of qualified immunity.

Appellee, a female officer with the Los Angeles Police Department, alleged that appellants violated her right to equal protection, due process and right to petition the government because they violated LAPD confidentiality regulations and delayed the investigation into her allegations of co-worker rape.

(Lead counsel)

National Abortion Federation v. Operation Rescue

8 F.3d 680 (9th Cir. 1993)

Class-action state-wide injunction against blockades of women's health care clinics by anti-abortion activists. First case decided under the "frustrate and hinder" clause of 42 U.S.C. § 1985(3), the 1871 Ku Klux Klan Act. Appeals court held cause of action under "frustrate and hinder" clause was properly plead and reversed 12(b)(6) ruling on that claim.

(Co-lead counsel throughout; argued on appeal)

Hewitt v. Joyner

940 F.2d 1561 (9th Cir. 1991)

Establishment Clause challenge to Christian theme park, Desert Christ Park, owned and operated by San Bernardino County. Ninth Circuit held County ownership and operation of the park violated the Establishment Clause.

(Lead counsel throughout litigation; argued on appeal).

Standing Deer v. Carlson

831 F.2d 1525 (9th Cir. 1986)

First Amendment challenge for Native Americans at Lompoc Federal Penitentiary to regulation barring religious headbands in the dining facilities for purported health reasons.

(Argued and briefed on appeal)

Burbridge v. Sampson

74 F.Supp.2d 940 (C.D. Ca. 1999)

First Amendment challenge to community college policy regulating student speech in public fora on campus. Court issued a preliminary injunction, declaring the college's speech regulations unconstitutional.

Rubin v. City of Santa Monica

823 F.Supp. 709 (C.D. Ca. 1993)

First Amendment challenge to city permit scheme limiting access to public parks for protected expressive activities. Court issued a preliminary injunction and declared the permit scheme unconstitutionally on vagueness grounds and procedural due process grounds. (Lead counsel)

State Court

Terry Tipton-Whittingham, et al. v. City of Los Angeles

34 Cal.4th 604 (2002)

California continues to recognize "catalyst" fee awards to prevailing parties under the private attorney-general statute (Cal. Code of Civ. Proc. §1021.5) and Fair Employment and Housing Act (FEHA) despite change in federal civil rights fee-shifting law. Under California law, there is no requirement of a judicial determination establishing a change in the legal obligations of the parties.

(Co-counsel) and argued at California Supreme Court)

Los Angeles Alliance for Survival v. City of Los Angeles

22 Cal.4th 352 (2000)

Ordinance restricting certain activity as "aggressive solicitation" was not content-based under California Constitution

(co-counsel)

Williams v. Garcetti

5 Cal.4th 561 (1993), *sub nom Williams v. Reiner*, 13 Cal.App.4th 392 (1991)

Challenge on due process grounds to portion of STEPP law which imposed a criminal penalty on parents of minor children engaged in or at risk of delinquent conduct.

(Argued and brief on appeal to California Supreme Court)

Sands v. Morongo Unified School District

53 Cal.3d 863, *cert denied*, 112 U.S. 3026 (1991)

225 Cal.App.3d 1385 (1989)

Establishment Clause challenge invalidating prayers at public high-school graduations.

(Argued and briefed as lead counsel throughout litigation)

Walker v. Superior Court of Sacramento

47 Cal.3d 112 (1988)

Establishment Clause/Free Exercise/Due Process challenge to criminal prosecution of Christian Science parents for death resulting from use of prayer instead of traditional medicine in treatment of ill child. (Wrote amicus brief on due process issues).

Irvine Valley College Academic Senate, et al. v. South Orange County Community College District

129 Cal.App.4th 1482 (2005)

Statutory construction of plain language of Education Code §87360, bolstered by legislative intent, requires actual joint agreement and mutual development of revisions to faculty hiring policies.

(co-counsel, drafted final briefs on appeal)

Fashion 21, et al. v. Coalition for Humane Immigrant Rights (CHIRLA), et al.

111 Cal.App.4th 1128 (2004)

Special motion to strike defamation complaint by retailer against garment worker advocates must be granted as the plaintiff retailer could not establish a probability of prevailing on the merits of their claims. Garment worker advocates properly relied on draft labor commission regulations suggesting retailer could be liable for sweatshop conditions of manufacturing of its retail goods.

(lead counsel at all stages)

Gonzalez v. Superior Court

33 Cal.App.4th 1539 (1995)

Challenge to discovery order in sexual harassment case requiring plaintiff to disclose name of confidential informant who provided her with photographic evidence of harassment. "After-acquired evidence" rule applied to require disclosure.

(Lead counsel in trial court and appeal)

Lantz v. Superior Court of Kern County

28 Cal.App.4th 1839 (1994)

Privacy rights challenge to interpretation of Consumer Personnel Records Statute (CCP § 1985(3), requiring strict adherence to statutory procedures and limiting exemption of local government agencies from adhering to statutory requirements.

(Lead counsel throughout litigation)

Rudnick v. McMillan

25 Cal.App.4th 1183 (1994)

Defamation verdict involving public figure plaintiff and local environmentalist author of letter to editor overturned on basis that letter was protected opinion and public figure subject to constitutional malice proof burden. Wrote amicus brief which formed basis of appellate ruling.

Westside Sane/Freeze v. Hahn

224 Cal.App.3d 546 (1990)

Challenge to restrictions on First Amendment petition activities in shopping center.

(Co-counsel, co-wrote appeal)

City of Glendale v. Robert George

208 Cal.App.3d 1394 (1989)

Reversal of trial court order imposing prior restraints on speech of "Presidential Santa" on the basis that he constituted a public nuisance to his neighbors in a residential area.

(Argued and briefed on appeal)

McCarthy v. Fletcher

207 Cal.App.3d 130 (1989)

Challenge to removal of textbooks from school reading list based on community-based religious objections. Court of Appeal reversed summary judgment decision, holding that there was sufficient evidence of constitutionally impermissible factors in evaluation of appropriateness of class-room reading materials.

(Argued and brief on appeal)

Fiske v. Gillespie

200 Cal.App.3d 130 (1988)

Challenge to sex-based actuarial presumptions in insurance industry rate for particular types of life insurance and annuity benefits.

(Co-Counsel, Argued on appeal)

Publications:

(Partial listing)s

Catalyst Fees After Buckhannon

Civil Rights Litigation and Attorney Fees Annual Handbook

(January 2006)

Free Speech and Harassment: An Overview

in the Public Employee Sector

CPER: CALIFORNIA PUBLIC EMPLOYEE RELATIONS

Institute of Industrial Relations - UC Berkeley

June 1999 No. 136

Defeating Employer Defenses to Supervisor Liability

After Ellerth and Faragher

ADVOCATE, October 1998

Student Expression Under California Law

UCLA Journal of Education

Volume 3, pp. 127-137 (1989)

Should Attorneys Be Disciplined For Gender Bias

Point/Counterpoint ABA Journal August, 1995

Fight Illegal Police Practices in State Court

Los Angeles Daily Journal

March 6, 1992

Judicial Oversight Limited by Supreme Court

Los Angeles Daily Journal

May 6, 1991

Jury Nullification is Conscience of Community

Los Angeles Daily Journal

August 31, 1990

A Basic Right Merits Shield From The Mob

Los Angeles Times

August 11, 1991 p.M5

Prop 115 revisited: Police charged with crimes

deserve fair trials too
Los Angeles Daily News
May 7, 1991

Prayer Doesn't Belong at Graduation
USA Today
May 15, 1991 p. A10

Killea Tactic Can Only Hurt the Church in the Long Run
Los Angeles Times (San Diego)
November 20, 1989 p.B7

The Fifth is a Shield for All
Los Angeles Times
August 6, 1988 118
(authored for Exec. Dir. ACLU)

Which Way Will Rehnquist Court Turn?
Los Angeles Daily News
June 18, 1986 p.21

Constitution Exact Cost for Religious Freedom
Los Angeles Daily News
June 8, 1986 FOCUS p.3

Education:

Peoples College of Law	J.D. May, 1978
Douglass College.For Women, Rutgers University	B.A. June, 1968

Professional and Community Activities:

Adjunct Professor - Loyola Law School Civil Rights Advocacy Practicum	2007-present
Blue Ribbon Panel on LAPD Rampart Inquiry, Member	2004-2006
Ninth Circuit Gender Bias Task Force Convenor, Advisory Committee on Employment Law	1992-1993
Ninth Circuit Conference on "Ethnicity, Race, and Religion in the Ninth Circuit" Member, Working Subcommittee	1993
National Police Accountability Project Member, Advisory Board and Board of Directors	2006-present

National Lawyers Guild, Los Angeles - President	2001-2008
National Lawyers Guild - National Executive Vice President	2009-2011
National Lawyers Guild Far West Regional Vice-President	2003-2005
National Lawyers Guild, National Executive Committee	2003-2012
NLG National Mass Defense Committee, Co-chair	2003-2012
Women Lawyers Association of Los Angeles Member, ProChoice Committee	1985-2002
The California Anti-SLAPP Project Member, Board of Directors	1995-2010

Awards:
(Partial listing)

PEN Freedom to Write Award	1991
American Jewish Congress Tzedek Award	1992
Planned Parenthood Los Angeles, Distinguished Service Award	1990
Freethought Heroine Award	1992
National Lawyers Guild - Los Angeles	1999
ACLU of Southern California Pro Bono Attorney Award	2001
Asian Pacific American Legal Center Pro Bono Award	2003
California Lawyer: Super Lawyer -Civil Rights/Constitutional Law	2004-2014
ACLU of Southern California Freedom of Expression Award	2007
Daily Journal Top 100 Most Influential Lawyers in California	2007
National Lawyers Guild - Emie Goodman Award	2007
Angel Award - California Lawyer Magazine Award for pro bono work	2007

CLAY Award (California Lawyer of the Year - civil rights) - California Lawyer Magazine	2008
Top 75 Women Litigators in California - Daily Journal	2008, 2013
California Super Lawyers - Top 50 Women Lawyers in Southern California	2014
National Lawyers Guild, Los Angeles Law for the People Award	2014

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LONG BEACH AREA PEACE NETWORK, et al.,)	NO. CV 04-08510 SJO (SSx)
)	
Plaintiffs,)	ORDER GRANTING PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AGAINST DEFENDANT [Docket No. 56]
v.)	
CITY OF LONG BEACH,)	
Defendant.)	

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.

24
25
26 ¹ The USAO *Laffey* Matrix is a publication based on District of Columbia averages of hourly
27 rates charged by attorneys, whereas the Altman Weil Survey is a national average of hourly rates
28 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
14  FOR PUBLIC RELEASE

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

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CIVIL MINUTES - GENERAL

CASE NO.: CV 11-01326 SJO (FMOx) DATE: August 2, 2012

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: Not Present
COUNSEL PRESENT FOR DEFENDANTS: 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.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 11-01326 SJO (FMOx)

DATE: August 2, 2012

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
CENTRAL DISTRICT OF CALIFORNIA

COMMUNITIES ACTIVELY
LIVING INDEPENDENT AND
FREE, a nonprofit corporation, and
AUDREY HARTHORN, an
individual, on behalf
of themselves and ALL OTHERS
SIMILARLY SITUATED

Plaintiffs,

vs.

CITY OF LOS ANGELES, a
public entity, and COUNTY OF
LOS ANGELES, a public entity,

Defendants.

CASE NO. CV 09-0287 CBM (RZx)
CLASS ACTION
ORDER GRANTING PLAINTIFFS'
APPLICATION FOR REASONABLE
ATTORNEYS' FEES AND COSTS

Before the court is Plaintiffs' Application for Reasonable Attorneys' Fees and Costs. [Docket No. 234.] Plaintiffs have applied to the Court for an order approving attorneys' fees and reimbursement of litigation costs to Class Counsel in the amount of \$1,225,000, and up to \$75,000 in attorneys' fees and costs for

1 monitoring the Settlement Agreement (“Agreement”). Defendant County of Los
2 Angeles does not oppose the motion, and these are the amounts contained in the
3 proposed class settlement agreement between the Plaintiffs and the County.

4 Having read the papers submitted and carefully considered the arguments and
5 relevant legal authority, and good cause appearing, the Court GRANTS Plaintiffs’
6 Motion for Reasonable Attorneys’ Fees and Costs and finds and rules as follows:

7 NOW, THEREFORE, IT IS HEREBY ORDERED:

8 1. The Court finds that Plaintiffs have submitted sufficient evidence
9 supporting their claim for reasonable attorneys’ fees and costs, and hereby
10 approves the settlement of attorneys’ fees and costs in the amount of \$1,225,000
11 for work performed on this matter, as stated in Section VII of the Agreement. The
12 Court also approves the availability of fees and costs for monitoring the
13 Agreement after Final Approval, in an amount up to \$75,000, as stated in Section
14 VI.G of the Agreement.

15 2. The Court finds that Plaintiffs have provided sufficient evidence,
16 including time records detailing the tasks performed on this matter and
17 declarations from practitioners in the field, supporting the reasonableness of their
18 2012 requested hourly rates. The Court finds that the requested hourly rates
19 correspond to the prevailing market rate in the relevant community, considering
20 the experience, skill, and reputation of the attorneys in question.

21 3. Class counsel stated that no other litigation in the country has sought
22 to determine the nature and extent of a municipality’s obligation to include
23 persons with disabilities in its emergency preparedness and planning efforts.
24 Therefore, counsel had to conduct considerable research, familiarize themselves
25 with the fact intensive literature on the subject of emergency planning, and
26 explore untested legal theories. The active litigation included extensive,
27 voluminous discovery, numerous depositions, and thousands of pages of
28

1 documents. The negotiations were thorough, involving many teleconferences, in-
2 person meetings, and conferences and mediation sessions before two judges.
3 Additionally, after a joint request to stay the litigation, the Court approved a
4 process where Plaintiffs and the Defendant County would coordinate to draft a
5 “Persons with Disabilities and Access and Functional Needs Annex,” (“Annex”)
6 for which the experts conferred and resolved many issues, and any disputes were
7 referred to counsel. Resolving the issues involved many settlement conferences
8 on the phone and in person, and multiple proposals and drafts by both parties.
9 After the Annex was sent out for public comment in late 2011, the U.S.
10 Department of Justice detailed its concerns, after which a second draft was
11 developed and Defendant County of Los Angeles developed a work plan.
12 Negotiations continued for five months regarding the scope of the Annex and
13 workplan. Parties then attended two mediation sessions in February and July 2012
14 and were able to resolve all outstanding substantive issues. After the July
15 mediation session, parties continued to work together to finalize the Agreement
16 and other matters, including attorneys’ fees and costs. The proposed settlement
17 was approved by the Los Angeles County Board of Supervisors on October 15,
18 2012.

19 4. The Court finds that Class Counsel was efficient in allocating work.
20 Counsel states that only four attorneys performed the majority of the work
21 required, that discrete tasks were given to other attorneys as needed, and that a
22 small group of attorneys litigated the entire case. Counsel also states that
23 Attorneys Wolinsky, Smith, and Gilbride from Disability Rights Advocates
24 (“DRA”), and Attorney Parks from Disability Rights Legal Center (“DRLC”), did
25 a majority of the work.

26 5. In support of the hourly rates quoted by lead attorneys in this case,
27 Attorney Wolinsky is a graduate of Yale Law School in 1961 and has been
28

1 practicing law and trying cases for over 50 years. He has been the lead and trial
2 attorney in well over 150 class action and high-impact cases, and has tried and
3 argued cases before the California and New York Federal Courts, the California
4 and Hawaii Supreme Courts, and many other appellate courts. He is the Director
5 of Litigation at DRA and is considered one of the foremost experts nationally on
6 civil rights and disability law, and is requesting an hourly rate of \$860. Attorney
7 Parks is a 1999 graduate of University of California at Berkeley, Boalt Hall, and is
8 nationally recognized as a leading disability rights attorney and has been co-
9 director of litigation at DRA since April 2012. From 2005 to March 2012, she
10 was at the DRLC, where she was a litigation attorney, and later the legal director
11 from 2009 to 2012, and is requesting an hourly rate of \$665. Attorney Smith is
12 managing attorney at DRA, and graduated from U.C. Berkeley, Boalt Hall Law
13 School in 2005. She received the 2013 California Lawyer Magazine Attorney of
14 the Year Award in the area of Disability Law for her work on this litigation and
15 the 2010 California Lawyer Attorney of the Year Award in the area of Disability
16 Law for her work on the above referenced Caltrans case, and is requesting an
17 hourly rate of \$555. Attorney Gilbride is a 2007 graduate of Georgetown Law
18 School and worked on this case as part of DRA. Attorney Gilbride served as a
19 law clerk to Judge Ronald Gould on the U.S. Court of Appeals for the Ninth
20 Circuit in Seattle. She conducted much of the written discovery and took and
21 defended several depositions. She was also responsible for all expert discovery,
22 and is knowledgeable in the requirements for emergency preparedness under the
23 law, and is requesting an hourly rate of \$430.

24 6. In support of the hourly rates quoted by other attorneys in this case,
25 Attorney Uzeta is a 1992 graduate of University of California at Davis, King Hall
26 School of Law, with a Certification in Public Interest Law. She has practiced
27 exclusively in the area of civil rights law, in particular disability rights, since
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1 1993. From February 1995 to August 2008, she worked as an attorney at
2 Disability Rights California (“DRC”), the largest disability rights organization in
3 the nation, where she represented individuals and classes with disabilities in
4 federal and state litigation. From August 2008 to December 2010, she was
5 employed as the Litigation Director of the Southern California Housing Rights
6 Center, a Los Angeles based nonprofit whose mission is to combat housing
7 discrimination, where she engaged mostly in disability discrimination cases, and is
8 requesting an hourly rate of \$700. Attorney Paradis is the Executive Director and
9 Co-Director of Litigation at DRA. He graduated from Harvard Law School in
10 1985 and has extensive experience with disability rights litigation, and has
11 received several awards for his work on precedent setting disability rights cases,
12 including the California Lawyer Magazine Attorney of the Year Award in 2003
13 and 2011 and the Trial Lawyer of the Year Award from the San Francisco Trial
14 Lawyers Association. Mr. Paradis assisted with advising the litigation team on
15 settlement strategy and potential experts, and is requesting an hourly rate of \$800.
16 Attorney Elsberry is a 1987 graduate of University of California, Hastings College
17 of Law. He was a Managing Attorney at DRA from 2009 to 2012, and is currently
18 a Senior Staff Attorney at DRLC. He assisted with certain tasks relating to class
19 certification, and is requesting an hourly rate of \$725. Attorney Weed is a 2002
20 graduate of the University of Michigan Law School. She was involved in the
21 preliminary investigation and review of the voluminous public records, and is
22 requesting an hourly rate of \$600. Attorney Biedermann is a 2007 graduate of
23 Yale Law School and was an Arthur Liman Fellow at DRA from 2007 to 2009.
24 She assisted with the review of many public records and drafting the complaint,
25 and is requesting an hourly rate of \$430. Attorney Chuang is a 2007 graduate of
26 University of Pennsylvania Law School and has been a Staff Attorney at DRA
27 since 2011. Previously, she was a Litigation Associate at Latham & Watkins LLP.
28

1 She primarily worked on finalizing the settlement agreement, providing notice to
2 the class, and drafting the motions for preliminary and final approval, as well as
3 the motion for reasonable attorneys' fees and costs, and is requesting an hourly
4 rate of \$430. Attorney Janssen is currently a Staff Attorney at DRA and graduated
5 from New York University School of Law in 2010. She assisted with discrete
6 tasks relating to the negotiation of the County's Work Plan and draft Annex, and
7 is requesting an hourly rate of \$330. Attorneys Patkin, Lee, and Strugar worked
8 on the case in their capacity as attorneys at DRLC. Former DRLC staff attorney
9 Patkin is a 2007 graduate of UCLA School of Law, and is requesting an hourly
10 rate of \$450. Former DRLC staff attorney Strugar is a 2004 graduate of USC
11 Gould School of Law, and is requesting an hourly rate of \$525. Former DRLC
12 staff attorney Lee is a 2003 graduate of Loyola Law School, and is requesting an
13 hourly rate of \$550. The Fee Experts cited by Attorneys indicate that the hourly
14 rates requested by all of these attorneys is reasonable.

15 7. The Court finds that the rate of \$240 for DRA's paralegals and \$250
16 for its summer associates is reasonable. DRA's paralegals are college graduates
17 that have worked under attorney supervision for over a year. DRA's summer
18 associates generally have two full years of law school experience before working
19 at DRA for their second-year summer. The Court further finds that the hourly rate
20 of \$230 for DRLC's law clerks and litigation assistants is reasonable.

21 8. The Court hereby approves the following 2012 hourly rates and hours
22 expended:

DRA	Rate	Hours	Fees
Sid Wolinsky	\$860.00	700.00	\$602,000.00
Shawna Parks	\$665.00	81.40	\$54,131.00
Mary-Lee Smith	\$555.00	139.50	\$77,422.50
Karla Gilbride	\$430.00	494.40	\$212,592.00

DRA	Rate	Hours	Fees
Larry Paradis	\$800.00	15.80	\$12,640.00
Ron Elsberry	\$725.00	18.30	\$13,267.50
Katherine Weed	\$600.00	20.50	\$12,300.00
Stephanie Biedermann	\$430.00	184.00	\$79,120.00
Christine Chuang	\$430.00	125.00	\$53,750.00
Kara Janssen	\$330.00	36.40	\$12,012.00
Summer Associates	\$250.00	26.70	\$6,675.00
Paralegals	\$240.00	260.90	\$62,616.00

DRLC	Rate	Hours	Fees
Michelle Uzeta	\$700.00	35.50	\$24,850.00
Shawna Parks	\$665.00	285.60	\$189,924.00
Debra Patkin	\$450.00	143.50	\$64,575.00
Jennifer Lee	\$550.00	16.00	\$8,800.00
Matthew Strugar	\$525.00	20.20	\$10,605.00
Law Clerk	\$230.00	122.90	\$28,267.00
Steve Cueller (Litigation Assist.)	\$230.00	4.70	\$1,081.00

9. The Court finds that the hourly rates and hours expended are reasonable under established Ninth Circuit law. *See Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000) (citing the lodestar figure and the requirement to consider factors outlined in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)).¹

¹ The requested Attorneys' Fees and Costs stem from negotiations between Class Counsel and the County of Los Angeles, and are much lower than the fees calculated under the lodestar method. The calculated fees, without any multiplier, are \$1,526,628.00 and the costs expended are \$47,903.05, for a total of \$1,574,531.05, which is \$349,531.05 greater than the amount negotiated by the Settlement. Since this case involved injunctive and declaratory relief, the Fee award will not result in an "inequity" between Counsel and Class Members. *See In re HP Inkjet Printer Litig.*, 11-16097, --- F.3d ----, 2013 WL 1986396, *1, *5 (9th Cir. May 15, 2013) (reasoning that "coupon" settlements may create inequity where Class Counsel request fees and

1 10. The Court further finds that Counsel has submitted sufficient
2 evidence of the time and effort undertaken by Class Counsel in prosecuting and
3 settling the claims, and that this time and effort was reasonable and necessary in
4 light of the needs of the litigation.

5 In accordance with the terms of the Agreement, the County of Los Angeles
6 shall pay attorneys' fees and reimbursement of litigation costs to Class Counsel in
7 the amount of \$1,225,000 within ninety (90) days of this Order (September 9,
8 2013) and up to \$75,000 for monitoring the Agreement within six (6) years of this
9 Order.

10
11 **IT IS SO ORDERED.**

12 DATED: June 10, 2013

A rectangular stamp with the text "FOR PUBLIC RELEASE" in bold, blue capital letters. The stamp has a light blue background and is flanked by two horizontal lines that curve slightly at the ends.

13 CONSUELO B. MARSHALL
14 UNITED STATES DISTRICT JUDGE

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28 costs).

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Attorneys for Defendant/Appellee MICHAEL GARCIA

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

17 LOS ANGELES UNIFIED SCHOOL
18 DISTRICT,

Plaintiff,

v.

20 MICHAEL GARCIA,

Defendant.

Case No. 10-55879

**DECLARATION OF LAURENCE W.
PARADIS IN SUPPORT OF
DEFENDANT/APPELLEE'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

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27 DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
28 DEFENDANT/APPELLEE'S MOTION FOR ATTORNEYS' FEES

1 I, Laurence W. Paradis, declare as follows:

2 1. This declaration is submitted in support of Defendant/Appellee's
3 Motion for Fees and Costs. The facts set forth herein are within my personal
4 knowledge or knowledge gained from review of the pertinent documents. If called
5 upon, I could and would testify competently thereto.

6 2. I am the Executive Director and Co-Director of Litigation of
7 Disability Rights Advocates ("DRA") in Berkeley, California. DRA is a 501(c)(3)
8 non-profit public interest organization exclusively dedicated to advancing the civil
9 rights of people with disabilities. DRA engages in class action and other impact
10 litigation on behalf of clients who face discrimination or other violations of civil
11 rights or federal statutory protections. The attorneys at DRA have served as class
12 counsel for at least 75 disability access class actions, including leading cases in the
13 field of disability rights law.

14 3. I graduated from Harvard Law School in 1985. I am an attorney
15 admitted to the practice of law before the Courts of the State of California, the
16 United States District Courts for the Northern, Central and Eastern Districts of
17 California, the United States Court of Appeals for the Ninth Circuit, and the United
18 States Supreme Court.

19 4. Since I started at DRA in 1996, I have been involved in litigating,
20 negotiating and supervising attorneys in numerous lawsuits across the state and
21 country affecting the rights of people with disabilities. A few examples of cases
22 litigated include:

- 23 • *Bates v. UPS*, 465 F.3d 1069 (9th Cir. 2006) *reh'g en banc granted*,
24 485 F. 3d 1053 (9th Cir. 2007), a nationwide class action on behalf of
25 UPS employees with hearing impairments denied accommodations in
26 the workplace. This case went to trial in 2003 resulting in a
27 settlement and Ninth Circuit opinion improving access and

28 DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLEE'S MOTION FOR ATTORNEYS' FEES

1 promotional opportunities for deaf and hearing impaired employees at
2 UPS facilities throughout the country.

- 3 • *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002), a class
4 action on behalf of people with mobility and vision disabilities to
5 enforce access requirements for public sidewalks throughout the city.
6 This case resulted in a published opinion from the Ninth Circuit
7 establishing the broad scope of the ADA's requirement for "program
8 access" under Title II and a subsequent comprehensive settlement
9 agreement. *See id., cert denied*, 123 S.Ct 2639 (2003).
- 10 • *Tucker v. California State Parks*, Case No. C 98-04935 (N.D. Cal.
11 1998), a class action against the entire California state park system.
12 The case resulted in a settlement under which the state has committed
13 to undertake broad access improvements across over 200 state parks.
14 The barriers at issue in that case included those affecting people with
15 mobility, vision, and hearing disabilities.
- 16 • *Cupolo v. BART*, 5 F. Supp. 2d 1078 (N.D. Cal. 1997), a class action
17 on behalf of all mobility disabled users of a regional mass transit
18 agency to enforce access requirements. This case resulted in a
19 published opinion issuing a preliminary injunction forcing BART to
20 maintain its elevators for use by the class, and a subsequent
21 comprehensive settlement agreement.
- 22 • *Enyart v National Conference of Bar Examiners*, 630 F.3d 1153 (9th
23 Cir. 2011), a case which established on appeal for the first time that
24 testing entities which provide gateway tests to professions and post
25 secondary education must provide the accommodations that "best
26 ensure" the disabled test taker is evaluated on a level playing field.
- 27 • *Lieber v. Macy's*, United States District Court 80 F. Supp. 2d 1065 (N.D.

28 DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLE'S MOTION FOR ATTORNEYS' FEES

1 Cal. 1999) and *Camalo v. Macy's*, United States District Court (Case
2 No. C-98-02350 SI), class actions against Macy's stores throughout
3 California for failure to remove barriers to access for people with
4 mobility disabilities. The Lieber case was among the first cases in the
5 country to go to trial to establish the scope of the ADA Title III
6 readily achievable requirement.

- 7 • *Shimozono v. Robinsons-May*, United States District Court (Case No.
8 00-04261 WJR (AJWx)): a case addressing physical access to
9 merchandise at major department stores in Los Angeles.
- 10 • *Californians for Disability Rights, Inc. v. California Department of*
11 *Transportation*, 249 F.R.D. 334, 337 (N.D. Cal. 2008): a statewide
12 class action brought on behalf of people with mobility and vision
13 disabilities seeking to make 2,500 miles of sidewalks under Caltrans'
14 jurisdiction accessible. The case settled during trial with Caltrans
15 agreeing to commit over one billion dollars towards removal of
16 pedestrian access barriers
- 17 • *Williams v. Housing Authority of the City and County of San*
18 *Francisco*, United States District Court (Case No. C90-2150 CAL): a
19 class action against the San Francisco Public Housing Authority on
20 behalf of tenants with disabilities denied equal access due to
21 architectural and other access barriers.

22 5. I am familiar with the attorneys of the Disability Rights Legal Center
23 (DRLC) and their work with high impact civil rights suits. They are highly
24 regarded in the field of civil and disability rights advocacy. DRLC is a nationally-
25 recognized organization dedicated to advancing and preserving the rights of
26 persons with disabilities. Its free legal services are indispensable to people who
27 have been discriminated against on the basis of their disabilities.

28 DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLE'S MOTION FOR ATTORNEYS' FEES

1 6. I understand that the DRLC is seeking a rate of \$475 per hour for
2 Carly Munson, a former Staff Attorney in the Education Advocacy Program. Ms.
3 Muson is a 2007 graduate of Boston University School of Law.

4 7. I understand that the DRLC is seeking a rate of \$450 per hour for
5 Andrea Oxman, a former Staff Attorney in the Disability Litigation Program. Ms.
6 Oxman is a 2007 graduate of the University of Southern California Gould School
7 of Law.

8 8. I also understand that the DRLC is seeking a rate of \$690 for Shawna
9 L. Parks, the DRLC's former Legal Director. Ms. Parks is a 1999 graduate of
10 Berkeley Law School and, as the former Director of Litigation at DRLC, Ms. Parks
11 had worked on numerous complex civil matters on behalf of individuals with
12 disabilities.

13 9. I also understand that DRLC is seeking hourly rate of \$500 for Anna
14 Rivera, a Staff Attorney at the Disability Litigation Program. Ms. Rivera is a 2005
15 graduate of Southwestern University School of Law.

16 10. I also understand that DRLC is seeking hourly rate of \$550 for
17 Maronel Barajas, a Senior Staff Attorney at the Education Advocacy Program.
18 Ms. Barajas is a graduate of 2003 of Columbia Law School.

19 11. In my opinion, these rates are well within and in fact, for several of
20 these attorneys, below the market rates for attorneys with similar skill and
21 experience in the Southern Californian market.

22 12. My 2013 rate was \$825 per hour for cases successfully completed.
23 Attached hereto as Exhibit A is the 2013 hourly rate sheet for DRA's attorneys and
24 legal assistants. These rates were based on 2013 rates charged to fee paying
25 clients by private law firms that handle complex litigation, and on prior fee awards
26 issued to DRA. DRA has not yet finalized our 2014 rate schedule.

27 13. Attached hereto as Ex. B is DRA's 2012 hourly rate sheet. DRA's

28 DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLE'S MOTION FOR ATTORNEYS' FEES

1 2012 hourly rates were approved by Judge Marshall in the Central District of
2 California in *Communities Actively Living Independent and Free et al. v. City and*
3 *County of Los Angeles*, Case No. 09-cv-00287-CBM-RZ (hereafter “CALIF”).

4 14. Attached hereto as Ex. C is DRA’s 2011 hourly rate sheet. DRA’s
5 2011 hourly rates were generally approved by Magistrate Judge Spero in *Enyart v.*
6 *National Conference of Bar Examiners*, except that rates for paralegals were
7 slightly reduced.

8 15. Attached hereto as Exhibits D and E are copies of the *CALIF* and
9 *Enyart* fee decisions.

10 16. Earlier contested fee motions similarly sustained DRA’s earlier
11 requested fee rates. *See, e.g. Californians for Disability Rights, Inc. v. California*
12 *Department of Transportation*, 249 F.R.D. 334, 337 (N.D. Cal. 2008) (Magistrate
13 Judge Report and Recommendation and District Judge Order Accepting Report
14 and Recommendation) (approving 2010 rates, including \$835 for a 1961 law
15 school graduate and \$730 for me – a 1985 law school graduate); *National*
16 *Federation of the Blind v. Target*, Case No. C 06-1802 MHP (N.D. Cal. 2006)
17 (approving 2008 rates, including \$625 for me and \$450 for a 2001 graduate);
18 *Gustavson v. U.C. Berkeley*, Case No. C 97-04016 BZ (N.D. Cal. March 24, 2005)
19 (approving 2004 rates, including \$495 for me, and \$235 for a 2002 graduate);
20 *Chapman v. California Department of Education*, Case No. C 01-1718 CHB (N.D.
21 Cal. April 7, 2004) (approving 2003 rates); *Shimozono v. Robinsons-May*, Case
22 No. 00-04261 WJR (AJWx) (C.D. Cal. 2003) (approving 2003 rates); *Chabner v.*
23 *United of Omaha Life Insurance Co.*, Case No. C 95-0447 MHP (N.D. Cal. 2001)
24 (approving 2001 rates); *Lieber v. Macy’s California*, C 96-2955 MHP (N. Cal.
25 2000) (approving 2000 rates).

26 17. While many of DRA’s cases are in Northern California, DRA has also
27 filed and litigated cases in Southern California including *Greater Los Angeles*

28 DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLE’S MOTION FOR ATTORNEYS’ FEES

1 *Agency on Deafness v. Burbank-Glendale-Pasadena Airport Authority*, Case No.
2 CV04-4187 DDP (VBKx) (C.D. Cal., Settled 2006); *CALIF v City of San*
3 *Francisco* Case No. CV09-8287CBM (RZx)(Central Dist. Cal 2009) (a class
4 action seeking to ensure that the needs of people with disabilities are addressed in
5 emergency preparedness planning), and *Shimozono v. Robinsons-May*, Case No.
6 00-04261 WJR (AJWx) (C.D. Cal., Settled 2003), among others. In my opinion,
7 rates in the Southern California area are generally comparable to those in San
8 Francisco, including in the area of civil rights, and disability rights in particular.
9 DRA does not make a distinction in its rates between its Southern and Northern
10 California cases.

11 18. Having practiced civil rights litigation for a number of years, I have
12 learned that the award of reasonable attorneys' fees to successful plaintiffs'
13 counsel is essential to the widespread enforcement of civil rights laws.

14 19. DRA, like DRLC, does not charge its clients for its services. Many
15 of the cases handled by DRA have required considerable expenditure of time and
16 resources prior to recovery. Similarly, these organizations must often wait a
17 substantial amount of time prior to recovering fees for successful cases. Few
18 plaintiff attorneys are willing or able to devote the enormous amount of resources
19 required to take on this type of litigation. Based on my experience, it is absolutely
20 essential that in a case such as this, where Plaintiffs litigated the case to a
21 successful result, that counsel recover their fees for time spent.

22 20. There is a strong correlation between the award of reasonable
23 attorneys' fees to successful plaintiffs' counsel and the effective enforcement of
24 civil rights. As a public interest legal organization, the DRLC has no realistic
25 expectation of recovering fees or costs in the event that cases are lost. Given the
26 high evidentiary hurdles and discovery pitfalls, discrimination cases involve
27 tremendous risks and costs. Therefore, it is necessary for plaintiffs to obtain a

28
DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLE'S MOTION FOR ATTORNEYS' FEES

1 fully compensatory fee in order to compensate for the contingent nature of success
2 and exceptional success, and the risk of a public interest organization's investment
3 in costs of litigation.

4 I declare under penalty of perjury under the laws of the United States that
5 the foregoing is true and correct.

6 Executed this 25th day of February 2014 in Berkeley, CA.

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8 
9 **FOR PUBLIC RELEASE**

LAURENCE W. PARADIS

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DECLARATION OF LAURENCE W. PARADIS IN SUPPORT OF
DEFENDANT/APPELLE'S MOTION FOR ATTORNEYS' FEES

Exhibit A

DISABILITY RIGHTS ADVOCATES
2013 HOURLY RATES
(Current Staff)

<u>I. Attorneys</u>	<u>Rate</u>	<u>Graduation</u>
Sid Wolinsky	\$875.00	1961
Laurence W. Paradis	\$825.00	1985
Stuart Seaborn	\$655.00	1998
Shawna Parks	\$675.00	1999
Kevin Knestrick	\$595.00	2003
Mary-Lee Smith	\$565.00	2005
Julia Pinover	\$455.00	2007
Christine Chuang	\$455.00	2007
Rebecca Williford	\$380.00	2009
Kara Janssen	\$355.00	2010
Michael Nunez	\$325.00	2011
Anne Kelsey	\$295.00	2012
Molly Kort	\$295.00	2012

II. Other Professional Staff

A. Summer Associate/Externs	\$265.00
B. Paralegal	\$250.00
C. Law Clerks	\$190.00
D. Case Clerk	\$170.00
E. Outreach Coordinator	\$190.00
F. Technical Support Specialist	\$250.00
G. Word-Processor	\$95.00

Exhibit B

DISABILITY RIGHTS ADVOCATES
2012 HOURLY RATES
(Current Staff)

<u>I. Attorneys</u>	<u>Rate</u>	<u>Graduation</u>
Sid Wolinsky	\$860.00	1961
Laurence W. Paradis	\$800.00	1985
Ron Elsberry	\$725.00	1987
Stuart Seaborn	\$645.00	1998
Shawna Parks	\$665.00	1999
Kevin Knestrick	\$590.00	2003
Anna Levine	\$590.00	2003
Mary-Lee Smith	\$555.00	2005
Julia Pinover	\$430.00	2007
Christine Chuang	\$430.00	2007
Rebecca Williford	\$350.00	2009
Kara Janssen	\$330.00	2010
Zack Duffly	\$290.00	2011
Michael Nunez	\$305.00	2011
Anne Kelsey	\$285.00	2012
<u>II. Other Professional Staff</u>		
A. Summer Associate	\$250.00	
B. Senior Paralegal	\$265.00	
C. Paralegal	\$240.00	
D. Law Clerks	\$190.00	
E. Case Clerk	\$170.00	
F. Outreach Coordinator	\$190.00	

G. Technical Support Specialist	\$240.00
H. Word-Processor	\$90.00

Exhibit C

2011 HOURLY RATES

(Current Staff)

<u>I. Attorneys</u>	<u>Rate</u>	<u>Graduation</u>
Sid Wolinsky	\$845.00	1961
Laurence W. Paradis	\$785.00	1985
Ron Elsberry	\$710.00	1987
Stuart Seaborn	\$675.00	1992
Kevin Knestrick	\$575.00	2003
Anna Levine	\$575.00	2003
Mary-Lee Kimber Smith	\$540.00	2005
Julia Pinover	\$415.00	2007
Christine Chuang	\$415.00	2007
Rebecca Williford	\$320.00	2009
Elizabeth Leonard	\$295.00	2010
Kara Werner	\$295.00	2010
Zack Duffly	\$280.00	2011
Michael Nunez	\$280.00	2011
<u>II. Other Professional Staff</u>		
A. Summer Associates	\$245.00	
B. Paralegals	\$230.00	
C. Law Clerks	\$180.00	
D. Case Clerk	\$165.00	
E. Outreach Coordinator	\$180.00	
F. Technical Support Specialist	\$235.00	
G. Word-Processor	\$85.00	

DISABILITY RIGHTS ADVOCATES – 2011 HOURLY RATES

<u>Former DRA Attorneys</u>	<u>Rate</u>	<u>Graduation</u>
Melissa Kasnitz	\$675.00	1992
Jennifer Bezoza	\$605.00	2000
Roger Heller	\$595.00	2001
Katie Weed	\$585.00	2002
Mazen Basrawi	\$535.00	2004
Kasey Corbit	\$535.00	2004
Jon Simeone (Admitted outside California)	\$400.00	2004
Lisa Burger	\$510.00	2005
Stephanie Biederman	\$410.00	2007
Karla Gilbride	\$415.00	2007
Becca Von Behren	\$365.00	2008
Elina Druker	\$320.00	2009
Stephanie Enyart (Not yet admitted)	\$265.00	2009

1 SIDNEY M. WOLINSKY (CA BAR NO. 33716) (swolinsky@dralegal.org)
2 MARY-LEE K. SMITH (CA BAR NO. 239086) (msmith@dralegal.org)
3 ZOE CHERNICOFF (CA BAR NO. 274545) (zchernicoff@dralegal.org)

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16 HEATHER T. RANKIE (CA BAR NO. 268002) (hrankie@zelle.com)

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19 San Francisco, CA 94104
20 Telephone: (415) 693-0700
21 Facsimile: (415) 693-0770

22 *Attorneys for Plaintiffs*

23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**

25 G.F., by and through her guardian ad litem,
26 Gail F.; W.B.; and Q.G.; on behalf of
27 themselves and a class of those similarly
28 situated,

Plaintiffs,

v.

CONTRA COSTA COUNTY; CONTRA
COSTA COUNTY OFFICE OF
EDUCATION,

Defendants.

Case No. C-13-03667 MEJ

CLASS ACTION

**DECLARATION OF MARY-LEE SMITH
IN SUPPORT OF PLAINTIFFS' NOTICE
OF MOTION AND MOTION FOR
REASONABLE ATTORNEYS' FEES AND
COSTS**

Date: November 12, 2015

Time: 10:00 a.m.

Place: Courtroom B1, 15th Floor

Judge: Magistrate Judge James

Trial Date: None Set

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1 I, Mary-Lee Smith, declare that if called as a witness I would and could testify
2 competently as follows:

3 1. I am one of the attorneys for the settlement class in the above-entitled action.
4 Attached hereto as **Exhibit A** is a true and correct copy of my resume.

5 2. Class Counsel in this case consists of two civil rights organizations: Disability
6 Rights Advocates (“DRA”) and the Public Counsel Law Center (“Public Counsel”). Zelle
7 Hofmann Voelbel & Mason LLP (“Zelle Hofmann”) and Paul Hastings LLP (“Paul Hastings”) also served as Plaintiffs’ counsel at different times during the prosecution of this case, but did
8 not seek appointment as Class Counsel.
9

10 **About Disability Rights Advocates**

11 3. DRA is a 501(c)(3) non-profit public interest organization headquartered in
12 Berkeley, California exclusively dedicated to advancing the civil rights of people with
13 disabilities. Founded in 1993, DRA focuses on class actions and other high impact litigation on
14 behalf of clients who face discrimination on the basis of various types of disabilities, including
15 mobility, vision, hearing, learning, and mental disabilities.

16 4. DRA generally handles cases in which the client or clients cannot afford to retain
17 a private law firm. Our clients do not pay for our services. DRA receives no government
18 funding. The existence of DRA is largely dependent upon court-awarded fees in the cases in
19 which we are successful.

20 5. DRA is generally acknowledged to be one of the leading public interest legal
21 centers in the country in the field of disability rights law. Our attorneys regularly lecture to local,
22 state, and national legal and professional organizations on the law applicable to persons with
23 disabilities. In addition, DRA has received the American Bar Association’s Paul Hearn Award
24 for its outstanding work in disability rights law. Because of its reputation and area of specialty,
25 DRA is able to attract personnel of unusually high caliber. DRA regularly hires law school
26 graduates, law clerks, paralegals, and law students from high-ranking schools and universities
27 and/or with prior relevant experience in disability rights advocacy.
28

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6. DRA regularly associates with private firms and attorneys as co-counsel to ensure that we bring the resources necessary to the successful prosecution of our cases. In this litigation, we have been co-counsel with Public Counsel, Paul Hastings, and Zelle Hofmann.

DRA Attorneys Working on the Case

7. Attorneys at DRA who have represented the Plaintiffs and the proposed settlement class, in addition to myself, include Sid Wolinsky, Larry Paradis, Shawna Parks, Rebecca Williford, Kara Janssen, Zoe Chemicoff, Rebecca Rodgers, Molly Kort, and Anne Kelsey.

8. I am the Co-Director of Litigation at DRA and graduated from University of California, Berkeley Law School (Boalt Hall) in 2005. I have more than ten years of experience litigating class actions on behalf of persons with disabilities. I am the recipient of the 2010 and the 2013 California Lawyer Attorney of the Year Award in the area of Disability Law for my work in *Californians for Disability Rights, Inc. v. California Dep't. of Transp.*, 06-Civ-05125 (N.D. Cal.) and *Cmtys. Actively Living Indep. and Free, et al. v. City and Cnty. of Los Angeles*, Case No. 09-cv-00287-CBM-RZ (C.D. Cal., Jun. 10, 2013) (hereinafter "CALIF") respectively. I was also recently named a Top Woman Lawyer by the Daily Journal for my work. My 2014 requested hourly rate is \$580 per hour. My hourly rate is comparable to previous rates awarded for other cases.

9. The requested 2014 hourly rate of \$895 for Sid Wolinsky is reasonable given his extensive legal experience and exhaustive knowledge of disability rights law and litigation strategy. Mr. Wolinsky is the Founder and Supervising Attorney at DRA and is one of the leading disability rights and class action litigators in America. He graduated from Yale Law School in 1961 and has specialized in complex public interest litigation for over 40 years, including over 25 years working exclusively in high-impact cases advocating for the rights of persons with disabilities. Mr. Wolinsky has been the lead attorney in over 200 successful class action and high-impact cases. He received the 2011 Loren Miller Award, the California State Bar's highest award for lifetime achievement in legal services, the 2013 California Lawyer of the Year Award in Disability Rights, and the 2011 Daily Journal Top 100 Lawyers in California

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1 award. Thus, Mr. Wolinsky's requested 2014 rate of \$895 per hour is reasonable, and a
 2 comparable rate from previous years has been awarded to him on many other occasions.

3 10. Shawna Parks' requested 2014 rate is \$690. Ms. Parks is a 1999 graduate of the
 4 University of California, Berkeley Law School (Boalt Hall). Ms. Parks was a Director of
 5 Litigation at DRA from 2012 to 2013, and she is currently the principal attorney at the Law
 6 Office of Shawna L. Parks. Prior to joining DRA, Ms. Parks practiced at Disability Rights Legal
 7 Center in Los Angeles, where she was a Litigation Attorney from 2005 through 2009 and then
 8 the Legal Director from 2009 through 2012. Ms. Parks oversaw the factual investigation of the
 9 case and development of the complaint.
 10

11 11. Kara Janssen and Zoe Chernicoff's 2014 rates of \$370 per hour are also
 12 reasonable. Ms. Janssen is a 2010 graduate of New York University School of Law, where she
 13 was a Root-Tilden-Kern scholar. She worked at DRA from 2010 to 2015, and has over four years
 14 of experience litigating class actions on behalf of individuals with disabilities. Ms. Chernicoff is
 15 a 2010 graduate of Columbia Law School and began working at DRA in 2013. Prior to joining
 16 Disability Rights Advocates, Ms. Chernicoff clerked for Judge Lewis A. Kaplan in the Southern
 17 District of New York from 2011-2012, and for Judge Chester J. Straub in the Second Circuit
 18 Court of Appeals from 2012-2013. She was also a litigation associate at the Los Angeles Office
 19 of Sullivan & Cromwell from 2010-2011.

20 12. The following chart summarizes the rates of all the attorneys at DRA who worked
 21 on this case along with their year of graduation from law school:

Attorney	Rate	Law School Graduation Date
Sid Wolinsky	\$895	1961
Laurence Paradis	\$845	1985
Shawna Parks	\$690	1999
Mary-Lee Smith	\$580	2005
Rebecca Williford	\$405	2009
Zoe Chernicoff	\$370	2010

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1	Kara Janssen	\$370	2010
2	Rebecca Rodgers	\$350	2011
3	Anne Kelsey	\$325	2012
4	Molly Kort	\$325	2012

5
6 13. The hourly rates DRA has set for summer associates is \$270, for paralegals is
7 \$255, and for law clerks is \$195. Law clerks at DRA are individuals who are in their first year as
8 litigation assistants and who have not yet earned their paralegal certificate, which they earn after
9 one year of working at DRA.

10 14. DRA has previously filed for motions for attorneys' fees and received attorneys'
11 fees in other cases using similar rates for either the above-mentioned attorneys or similarly
12 situated attorneys with respect to experience, knowledge, and skills. Our most recent fee award
13 was in 2014 in *Gray, et al. v. Golden Gate National Recreational Area, et al.*, Case No. 3:14-cv-
14 00511 (N.D. Cal., July 9, 2014). See Exhibit B. In addition, the CALIF court also approved DRA
15 rates for many of the attorneys working on this case in 2012. See Exhibit C.

16 **DRA's Policy and Practice for Maintaining Time Records**

17 15. As Co-Director of Litigation at DRA, I am familiar with the process by which
18 DRA creates and maintains records of the hours worked by attorneys, law student interns, and
19 support staff on litigation matters. It is the policy and practice of the office that attorneys, law
20 student interns, and support staff keep contemporaneous time records of all work performed on
21 litigation matters, which is entered into a computer database. The only two situations in which
22 we include time in our billing records that was not contemporaneously recorded are: (1) when we
23 work on a matter out of the office, or (2) when a review of a colleague or co-counsel's billing
24 records clearly reveals that one of us participated in a phone call, meeting, court hearing or other
25 event and that event does not appear in DRA's billing records. In the first circumstance, the
26 practice and policy of the office is to have the person record the time as soon as he or she returns
27 to the office. In the second situation, it is office practice and policy to reconstruct the entry based
28

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1 on the colleague or co-counsel's billing records if the person believes the colleague or co-
2 counsel's billing records are more accurate.

3 16. In all cases such as this one, in which fees are being sought, it is the regular
4 practice of DRA for support staff to compile a billing statement that lists, among other things, the
5 hours worked on the matter, the billing rate for the person who worked those hours, a "lodestar"
6 for each billing entry, and a cumulative lodestar for DRA as a whole. Once the statement is
7 made, it is the practice of a lawyer on the case to review the entries, redact confidential
8 information, and remove those entries that are duplicative, or improperly assigned to the matter,
9 as well to remove entries in an exercise of billing judgment.

10 Time Expended on this Case by DRA

11 17. DRA time on the federal class action proceeding for which we seek compensation
12 is summarized in **Exhibit D**. The time records from which this exhibit was created were prepared
13 in exactly the manner described in paragraphs 15-16 above.

14 18. The principal tasks for which we seek compensation include: investigating and
15 researching the case before filing; drafting and editing various documents, including the
16 complaint, class certification and oppositions to motions to dismiss, settlement agreements and
17 its exhibits, motions for preliminary and final approval of the settlement agreements and class
18 notice; negotiating, structuring and preparing the present settlement agreements; identifying and
19 interviewing appropriate Class Members and witnesses; researching claims and issue areas;
20 meeting with clients for counseling, fact development, and to discuss negotiations; preparing for
21 depositions and defending depositions; review of documents; ongoing advocacy related to
22 services needed; and dissemination of the class notice.

23 19. Kara Janssen and I reviewed the billing printout which was prepared in the
24 manner described in paragraphs 15-16. First, Ms. Janssen carefully reviewed each item and
25 removed items improperly assigned to this case. She also redacted information in these records
26 that included names, or otherwise reflected the identity, of the named plaintiffs or any other
27 youth involved in this matter. I then reviewed the billing printout a second time to check for any
28 items that may have been overlooked.

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20. I have conservatively exercised billing judgment, eliminated certain time that did not appear to be reasonably spent, and reduced additional time in an effort to reach an amicable settlement on the claim for attorneys' fees. Thus, our office is only seeking reimbursement for a portion of the overall fees expended.

21. After exercising billing judgment as described in paragraphs 15-16, through January 2015, DRA attorneys and staff spent 5,293.6 hours on this federal case, as set forth in **Exhibit D**. Based on our customary billing rates, this would amount to \$2,375,735.50 in attorney's fees. Adding costs to our fees totals \$2,391,226.44. The total of the attorneys' fees billed and costs expended by Public Counsel, DRA, Zelle Hofmann, and Paul Hastings for the federal case as of January of 2015 is \$4,414,045.55.

22. After exercising billing judgment as described in paragraphs 15-16, through January 2015, and as set forth in **Exhibit E**, DRA attorneys and staff spent 599.4 hours on time classified as Due Process (Shared) time. This includes work spent on due process actions relevant to both the County and CCCOE. Based on our customary billing rates, this would amount to \$248,290 in attorneys' fees. Adding costs to our fees totals \$251,973.20. The total of the attorneys' fees billed and costs expended by Public Counsel, DRA, and Paul Hastings for Probation's half of the Due Process (Shared) time is \$312,079.89. To determine the amount of attorneys' fees of Due Process (Shared) time to use in calculating DRA's lodestar, only one-half of \$248,290, or \$124,145, should be used for Due Process (Shared) time.

23. In addition, as set forth in **Exhibit F**, DRA attorneys and staff spent 1,013.1 hours working on the related individual administrative due process proceedings and appeals for the named Plaintiffs, *Contra Costa Cnty. v. Barbara C.*, Civil Case No. C14-00268 MEJ, *Contra Costa Cnty. v. CiCi C.*, Civil Case No. C14-00269 MEJ, and *Contra Costa Cnty. v. Gail F.*, Civil Case No. C14-00270 MEJ, as against Contra Costa County's Probation Department only. I have exercised full billing judgment as described in paragraphs 15-16 in reviewing the billing records and reducing the fees sought. Based on our customary billing rates, this time would amount to \$413,970 in attorney's fees. The total of the attorneys' fees billed and costs expended by Public

1 Counsel, DRA, and Paul Hastings for the due process proceedings and appeals against Probation
2 only is \$554,373.08.

3 24. Since January 2015, DRA has also spent and will continue to spend significant
4 additional time on this case through final approval of the settlement agreements.

5 25. Plaintiffs' Counsel expended only as much time as was needed to fully protect the
6 interests of the clients and proposed class and to successfully litigate and settle this matter. At all
7 times throughout this case, DRA coordinated work on this case such that assignments were made
8 to individuals within DRA, Public Counsel, Paul Hastings, and Zelle Hofmann, according to
9 their expertise and level of experience, and such that only a core group of three to four attorneys
10 worked on the matter at all states of the litigation and settlement negotiations.

11 26. Under the terms of the proposed settlement agreements between Plaintiffs and the
12 Defendants, the County will pay Plaintiffs' counsel \$1,340,000 in attorneys' fees and costs for
13 both the class action and the individual due process administrative proceedings and appeal, and
14 the Contra Costa County Office of Education will pay Plaintiffs' counsel \$1,165,000 in
15 attorneys' fees and costs for the class action case.¹ Thus, DRA will receive a share of \$2,505,000
16 for its work on the federal class action case against both Defendants and the related due process
17 administrative appeals against Probation, rather than a share of the lodestar of \$5,617,406. Even
18 when adding all costs, which total \$133,354.52, the total combined amount of both settlements is
19 still only 47% of Plaintiffs' Counsel's total applicable fees and costs.

20 **Contingent Nature of Plaintiffs' Counsel's Representation of Plaintiffs**

21 27. The Retainer agreement provides, in-relevant part: "There will be no attorneys'
22 fees or costs (hereinafter 'Fees and Costs') charged to Client by Attorneys, except as set forth
23 below. . . . [Client] agree[s] that Attorneys will take all necessary steps to seek an award of Fees
24 and Costs and, in the event such Fees and Costs are recovered or are awarded, [Client] agree[s]
25 that such Fees and Costs shall belong solely to Attorneys." Accordingly, Plaintiffs' counsel's
26

27 ¹ Plaintiffs previously reached a separate agreement with the Contra Costa County Office of
28 Education to settle the attorney's fees and costs arising out of the individual due process
proceedings against it.

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1 representation of Plaintiffs was wholly contingent – in other words, we received no
2 compensation for the legal services from our clients, and will receive compensation, if any, only
3 by a motion for attorney’s fees and costs.
4

5 I declare, under penalty of perjury that the foregoing is true and correct, and that this is
6 declaration was executed on September 29, 2015 in Berkeley, California.
7

8
9 
10 **FOR PUBLIC RELEASE**

11 _____
12 Mary-Lee Smith
13 Attorneys for Plaintiffs
14 Disability Rights Advocates
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HERIBERTO RODRIGUEZ,
CAROLOS FLORES, ERICK
NUNEZ, JUAN CARLOS
SANCHEZ and JUAN TRINIDAD

Plaintiffs,

vs.

COUNTY OF LOS ANGELES, et al.

Defendants.

CASE NO. 10-6342-CBM (AJWx)

ORDER GRANTING PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES

Before the Court is Plaintiffs' Corrected Motion for Attorneys' Fees (the "Motion"). (Dkt. No. 668.) This matter is fully briefed and was taken under submission without oral argument.

I. JURISDICTION

This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(3), and 1367.

II. FACTUAL AND PROCEDURAL OVERVIEW

Heriberto Rodriguez, Eric Nunez, Juan Carlos Sanchez, Juan Trinidad, and

1 Carlos Flores (collectively “Plaintiffs”) were prisoners at the Men’s Central Jail
2 (“MCJ”) in Los Angeles, California when they were involved in a violent conflict
3 with prison guards and officials in the jail. During this conflict, MCJ guards
4 attempted to extract Plaintiffs from their jail cells using excessive force, including
5 using Tazers for extended periods targeting Plaintiffs’ sensitive body parts. The
6 result of this conflict left the Plaintiffs seriously injured. On August 25, 2010,
7 Plaintiffs brought a civil rights action against numerous Defendants, including the
8 County of Los Angeles (“COLA”), the Los Angeles Sheriff’s Department
9 (“LASD”), and individual guards and supervisors. In their complaint, Plaintiffs
10 alleged that these Defendants violated Plaintiffs’ Eighth and Fourteenth
11 Amendment rights under 42 U.S.C. § 1983 (“Civil Rights Act” or “§1983”) and
12 Cal. Civ. Code § 52.1 (“Bane Act” or “§52.1”).

13 On November 7, 2013, after four years of litigation and a month-long trial,
14 a jury returned a verdict in favor of each Plaintiff on all causes of action.¹ The
15 jury found that the Plaintiffs were subjected to force that was intentional and
16 excessive and determined that Defendants’ actions gave rise to liability under both
17 §1983 and §52.1.² On February 6, 2014, this Court entered judgment in Plaintiffs’
18 favor consistent with the jury verdict, awarding Plaintiffs \$754,000 in
19 compensatory and \$210,000 in punitive damages (for a total damage award of
20 \$950,000). Plaintiffs now request reasonable attorneys’ fees pursuant to 42 U.S.C.
21 § 1988 and Cal. Civ. Code § 52.1(h) for their success in litigating this hotly
22 contested prisoners’ civil rights case.

23 III. PROCEDURAL HISTORY OF THE MOTION

24 While Defendants’ post-trial motions were pending, Plaintiffs filed a
25 Motion for Attorney Fees and Costs, supported by numerous declarations and
26

27 ¹ Plaintiffs prevailed on both causes of action against COLA, LASD, and several, but not all, individual defendants.

28 ² Four of the Plaintiffs asserted liability under both statutes and prevailed on both the § 1983 and § 52.1 claims. Mr. Rodriguez asserted liability only under § 1983 and prevailed on that claim.

1 exhibits.³ (See Dkt. Nos. 644, 645, 646, 647, 648, 649, 650.) Almost two weeks
2 later, Plaintiffs filed a Corrected Motion for Attorney’s Fees and Costs (the
3 “Motion”) supported by an additional declaration and exhibits. (See Dkt. Nos.
4 668, 669.) Defendants filed a timely Opposition to the Motion, supported by two
5 declarations and several exhibits. (See Dkt. Nos. 678, 679, 680.) Plaintiffs
6 applied *ex parte* to include additional pages in their reply brief, and, without
7 permission of the Court, filed a reply exceeding this Court’s page limits by 25
8 pages; Plaintiffs also filed several additional declarations. (See Dkt. Nos. 684,
9 687, 688, 689, 690.) The Court granted Plaintiffs’ *ex parte* request for additional
10 pages, but limited Plaintiffs to five additional pages for their reply. (Dkt. No.
11 700.) Plaintiffs then filed a reply within this Court’s page limits. (Dkt. No. 702.)

12 Without permission of the Court, Defendants filed another opposition to
13 Plaintiffs’ Motion, opposing the additional fees requested in Plaintiffs’ reply brief.
14 (Dkt. No. 697.) Defendants then filed “Supplemental Authority in Support of
15 Defendants’ Opposition to Plaintiffs’ Motion for Attorney’s Fees and Costs,”
16 which included further argument opposing the Motion. (Dkt. No. 705.) Plaintiffs
17 filed a response to Defendants’ “Supplemental Authority” and offered additional
18 arguments supporting Plaintiffs’ Motion. (Dkt. No. 706.) A few weeks later,
19 Plaintiffs filed three more documents all containing additional arguments: a
20 “Supplement,” an Application for Leave to File Supplemental Briefing, and a
21 declaration with exhibits introducing new (but previously available) evidence.
22 (Dkt. Nos. 708, 709, 710.) Plaintiffs then filed a document labeled a “Notice of
23 Errata” that proffered additional arguments and requested a larger fee. (Dkt. No.
24 712.)

25 The parties’ excessive filing of documents related to Plaintiffs’ Motion
26 caused delay in the issuance of this order. The Court finds that both parties

27 ³ Plaintiffs’ brief exceeded this Court’s page limitations. Plaintiffs filed a concurrent *ex parte* application to exceed
28 page limitations. (Dkt. 643.) The Court later granted Plaintiffs’ request to exceed page limitations for the Motion.
(Dkt. 655.)

1 violated the local rules by filing documents after briefing was completed without
2 permission of the Court and by filing appendices containing excessive, and
3 improper, legal arguments. *See* L.R. 7-3 (“A party filing any document in support
4 of, or in opposition to, any motion noticed for hearing as above provided after the
5 time for filing the same shall have expired...shall be subject to the sanctions of
6 L.R. 83-7...”); *see also* L. R. 7-7 (“Declarations shall contain only factual,
7 evidentiary matter and shall conform as far as possible to the requirements of Fed.
8 R. Civ. P. 56(c)(4)”); *see also* L.R. 11-6 (“appendices shall not include any matters
9 which properly belong in the body of the memorandum of points and
10 authorities.”). For purposes of ruling on this Motion, the Court considers only the
11 legal arguments made in Plaintiffs’ Motion, Defendants’ Opposition, and
12 Plaintiffs’ fifteen-page Reply. (Dkt. Nos. 668, 678, 702.) The Court also
13 considers the timely evidence offered in support thereof. (Dkt. Nos. 645, 646, 647,
14 648, 649, 650, 669, 679, 680, 688, 689, 690, 692.)

15 **IV. LEGAL STANDARD**

16 **A. Lodestar Analysis**

17 A plaintiff that prevails in civil rights litigation under federal law (§1983) or
18 state law (§52.1) may be entitled to an award of attorney’s fees. *See Hensley v.*
19 *Eckerhart*, 461 U.S. 424, 433 (1983); *see also Chavez v. City of Los Angeles*, 47
20 Cal. 4th 970, 989 (2010). For a plaintiff that prevails on a §1983 claim, fees may
21 be awarded fees pursuant to 42 U.S.C. § 1988 (“§1988”). Once a plaintiff
22 establishes that it is the “prevailing party,” a reasonable fee award is typically
23 based upon the lodestar method: “the number of hours reasonably expended on the
24 litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433.
25 Reasonable hours are those hours that “would have been undertaken by a
26 reasonable and prudent lawyer to advance or protect his client’s interest in the
27 pursuit of a successful recovery.” *Armstrong v. Davis*, 318 F.3d 965, 971 (9th Cir.
28 2003) (citing *Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 638 (9th Cir. 1989)). A

1 “reasonable rate” may be demonstrated by the moving party submitting
2 “satisfactory evidence in addition to the attorney’s own affidavit that the requested
3 rates are in line with those prevailing in the community for similar services by
4 lawyers of reasonably comparable skill, experience and reputation.” *Blum v.*
5 *Stenson*, 465 U.S. 886, 895 n.11 (1984). “Where a plaintiff has obtained excellent
6 results, his attorney should recover a fully compensatory fee. Normally this will
7 encompass all hours reasonably expended on the litigation, and indeed in some
8 cases of exceptional success an enhanced award may be justified.” *Hensley*, 461
9 U.S. at 435; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Lodestar
10 analysis is generally the same under California law and Federal law.

11 **B. PLRA – Fees Awarded under Federal Law Claims**

12 Congress has adopted special standards and limitations on attorney’s fees
13 for prevailing plaintiffs seeking monetary damages authorized by 42 U.S.C. §
14 1988 when the prevailing plaintiff is a prisoner, as in this case. *See Prison*
15 *Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e.* Under the PLRA,
16 attorney’s fees can be awarded only if “directly and reasonably incurred in
17 proving an actual violation of the plaintiff’s rights protected by a statute pursuant
18 to which a fee may be awarded under section 1988.” 42 U.S.C. §1997e(d)(1)(A).
19 The fee must be “proportionally related to the court ordered relief for the
20 violation” or “directly and reasonably incurred in enforcing the relief ordered.” 42
21 U.S.C. §1997e(d)(1)(B). Up to 25 percent of any monetary award a prison
22 plaintiff receives pursuant to §1988 must be applied as a part of fee awarded to
23 counsel (the plaintiff’s “PLRA contribution”). 42 U.S.C. §1997e(d)(2).

24 As interpreted by the Ninth Circuit, attorney’s fees which are subject to the
25 PLRA are capped at 150% of the judgment awarded to prisoner plaintiffs. *See*
26 *Woods v. Carey*, 722 F.3d 1177, 1180 (9th Cir. 2013) (holding that prisoner
27 plaintiffs’ attorneys fees are capped at 150% of the judgment, but that appellate
28 work is not subject to the PLRA cap); *see also Dannenberg v. Valadez*, 338 F.3d

1 1070, 1075 (9th Cir. 2003) (holding that prisoner plaintiffs’ attorneys fees are
2 capped at 150% of the judgment, but where plaintiffs obtain injunctive relief their
3 fees are not subject to the PLRA cap). The hourly rate for fees subject to the
4 PLRA are also capped, and cannot exceed 150% of the authorized hourly rate for
5 court-appointed counsel under the Criminal Justice Act, 18 U.S.C. §3006A
6 (“CJA”). 18 U.S.C. §1997e(d)(3); see *Webb v. Ada Cnty.*, 285 F.3d 829, 839 (9th
7 Cir. 2002). The maximum rate established by the PLRA is the same for paralegals
8 and other non-attorney billers as it is for attorneys. *Perez v. Cate*, 632 F.3d 553,
9 558 (9th Cir. 2011) (“[T]he PLRA limits courts to an hourly rate that is 150
10 percent of the rate established for court-appointed counsel under the Criminal
11 Justice Act and does not set a separate benchmark rate for paralegal fees.”).

12 **C. Cal. Gov. Code §52.1(h) – Fees for State Law Claims**

13 Plaintiffs who prevail on a claim under California Civil Code § 52.1 are
14 entitled to attorneys' fees pursuant to Cal. Civ. Code § 52.1(h). The Ninth Circuit
15 has held that it is proper to use state law to determine an attorney’s fee where there
16 are overlapping federal and state civil rights claims and state law provides a
17 greater award than does federal law. See *Mangold v. California Pub. Utilities*
18 *Comm'n*, 67 F.3d 1470 (9th Cir. 1995). Further, in the Ninth Circuit, “when a
19 plaintiff succeeds on both federal and state claims that support a fee award, the
20 state-law multiplier is available.” See *Chaudhry v. City of Los Angeles*, 751 F.3d
21 1096, 1106 (9th Cir. 2014) (holding that “[i]f the Estate had prevailed on its § 52.1
22 claim, [as opposed to just a §1983 claim] it could have received a multiplier of its
23 attorneys' fees to account for the risk of contingent representation.”) (internal
24 citation omitted).

25 **V. DISCUSSION**

26 It is undisputed that Plaintiffs prevailed at trial and are entitled to fees as
27 “prevailing parties.” The Court must now determine a “reasonable” fee consistent
28 with state and federal law and within the limitations of the PLRA.

1 **A. Fees Payable Pursuant to State and Federal Law**

2 Plaintiffs prevailed on their civil rights claims under both the California
3 Bane Act (§52.1) and under federal Civil Rights Act (§1983). While these statutes
4 have their own fee provisions, Defendants argue that all attorney’s fees must be
5 awarded pursuant to §1988 because the Bane Act’s attorney’s fees provision
6 conflicts with a valid federal statute (the PLRA). The Court finds no such conflict
7 in the law and finds that Plaintiffs may be paid pursuant to §52.1(h) for their
8 success on § 52.1 claims.

9 The PLRA is expressly limited to claims challenging “prison conditions
10 under section 1983 ... or any other Federal law.” 42 U.S.C. § 1997e(a). PLRA
11 attorneys’ fee restrictions specifically apply to fees payable “under section 1988.”
12 42 U.S.C. § 1997e(d); *see Armstrong*, 318 F.3d at 975 (holding that the PLRA
13 applies only to fees paid pursuant to §1988); *see also Beckford v. Irvin*, 60
14 F.Supp.2d 85, 88 (W.D.N.Y.1999) (“The PLRA does not limit the award of
15 attorney’s fees to a prevailing plaintiff whose award is authorized under a statute
16 separate from § 1988.”) The Ninth Circuit has clearly held that the PLRA
17 restrictions need not apply where a statute independently provides for attorney’s
18 fees and fees are not awarded pursuant to §1988. *Armstrong* 318 F.3d at 975.

19 When there is a state law cause of action in a federal court, courts recognize
20 that “a state right to an attorney’s fee reflects a substantial policy of the state” and
21 “the method of calculating a fee is an inherent part of the substantive right to the
22 fee itself...” *Mangold*, 67 F.3d at 1479 (“The trial court did not err in applying
23 state law to calculate the fees available under state law.”). It is well established
24 that this Court may award fees pursuant to state law for state law claims. *Id.*; *see*
25 *also Chaudhry*, 751 F.3d at 1106 (finding that if the plaintiff prevailed on § 52.1
26 and §1983 claims based on the same conduct, the plaintiff could pursue attorney’s
27 fees pursuant to §52.1(h)).

28 Defendants argue an unpublished order from this district, *Pierce v. County*

1 of Orange, is “on all fours” with the matter now before this Court and, therefore,
2 Plaintiffs may only recover fees pursuant to federal law. However, in *Pierce*, the
3 Court determined that the PLRA rate cap limited the attorney’s fees available
4 under state law (Cal. Civil Code §1021.4) because the plaintiffs’ state and federal
5 constitutional claims were not separately discussed or adjudicated by the Court (or
6 the Ninth Circuit on remand) and all constitutional claims were remanded as a
7 violation of §1983. (*See* Defendants’ Ex. 1, p. 34-35 (Dkt No. 679).) Here,
8 Plaintiffs prevailed on separate state and federal causes of action pursuant to
9 separate state and federal statutes. The jury found Defendants liable under §1983
10 and §52.1 in separate jury findings.⁴ (Dkt. Nos. 595, 597, 599, 601.) Further,
11 unlike in *Pierce*, Plaintiffs’ request for fees distinguishes between hours sought for
12 §1983 claims and hours sought for §52.1 claims. Defendants’ reliance on *Pierce*
13 is not persuasive.

14 Further, the Ninth Circuit has found that Congress, in passing the PLRA,
15 did not intend to discourage the collection of fees in the “extremely small
16 percentage” of meritorious cases with substantial verdicts in favor of prisoner
17 plaintiffs. *Woods*, 722 F.3d at 1182 & n. 5. Congress instead sought to limit the
18 number of frivolous prisoner claims filed and to encourage early dismissal of such
19 lawsuits. *Id.* The lawsuit before this Court was not a frivolous prisoner lawsuit.
20 Plaintiffs’ lawsuit was meritorious and required competent counsel. Limiting
21 Plaintiffs’ state law fee pursuant to the PLRA would not serve Congress’s intent
22 and would not compensate counsel for Plaintiffs’ successful California law claims.

23 Plaintiffs are entitled to attorney’s fees pursuant to California law for their
24 successful California law claims and pursuant to federal law (limited by the
25 PLRA) for their successful federal claims.

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27
28 ⁴ Defendants were only held liable under §1983 as to Plaintiff Rodriguez.

(i) Distinguishing Fees Pursuant to State or Federal Law

1 The next issue the Court must determine is what portion of counsels' fee
2 should be awarded pursuant to §1988, subject to the limitations of the PLRA, and
3 what portion should be awarded pursuant to §52.1(h). This is a complex task
4 because, as noted by the Supreme Court, in civil rights litigation “[m]uch of
5 counsel’s time will be devoted generally to the litigation as a whole, making it
6 difficult to divide the hours expended on a claim-by-claim basis.” *Hensley*, 461
7 U.S. at 435. Differentiation is particularly difficult here, where Defendants were
8 found liable for both state and federal claims based on the same facts (an
9 underlying Eighth Amendment excessive force violation).

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11 Plaintiffs request over 5,500 hours of billable work on the merits of this
12 litigation through February 28, 2014.⁵ Plaintiffs request 1260.4 hours exclusive to
13 the § 1983 claims (to be awarded pursuant to §1988) and 4412.8 hours for services
14 relevant to Plaintiff’s state law claims (to be awarded pursuant to § 52.1(h)). (*See*
15 *Declaration of Barrett S. Litt in support of Corrected Motion for Attorney Fees*
16 *and Costs (“Litt Decl.”) ¶30 (Dkt. No. 669).)* Plaintiffs provide evidence that
17 counsel conducted a careful analysis and categorized each time entry in their
18 billing records for the past four years. (*See Declaration of Caitlin Weisberg in*
19 *Support of Motion for Attorney Fees and Costs (“Weisberg Decl.”) (Dkt. No.*
20 *650.)* Based on Attorney Weisberg’s review of over 3,700 individual billing
21 records, Plaintiffs’ attorneys determined that approximately 22% of the time
22 worked on this case was spent exclusively on Plaintiffs’ federal claims and should
23 be awarded under §1988 (“§1983 only” time). Plaintiffs argue that the other 78%
24 of the time was either devoted to Plaintiffs’ state law claims or was entwined with
25 Plaintiffs’ state law claims, and fees for those hours should be awarded pursuant to
26 §52.1(h).

27 ⁵ According to Attorney Weisberg, “merits hours” refer to all hours excluding hours spent on Plaintiffs’ motion for
28 sanctions for Defendants’ failure to comply with the Court’s discovery orders, hours spent on Plaintiff’s fee motion,
and hours spent litigating the interlocutory appeal in the Ninth Circuit. (*See Weisburg Decl., ¶¶ 6-7.*)

1 The time Plaintiffs classified as “§1983 only” includes time exclusive to 1)
2 Plaintiff Rodriguez (who had only a federal claim); 2) Plaintiffs’ *Monell* claim;⁶
3 3) qualified immunity issues; and 4) issues relating to attorney’s fees under the
4 PLRA. (Weisberg Decl. ¶ 7.) For billing entries that had “cross-over utility” for
5 both Plaintiffs’ state law and federal law claims, Plaintiffs determined a
6 percentage of the time which should be considered “§1983 only.” This percentage
7 ranged from one hundred percent “1983 only,” to time entries which benefitted
8 both Plaintiffs’ §1983 and §52.1 claims but of which counsel considered only 5%-
9 60% was work exclusive to Plaintiffs’ §1983 claims. (Weisberg Decl. ¶ 8-10.)

10 **(ii) Defendants’ Challenges to Plaintiffs’ Apportionment**

11 Defendants raise several challenges to Plaintiffs’ requested apportionment
12 and argue that some work classified by Plaintiffs as pertinent to Plaintiffs’ state
13 law claims should be classified as “§1983 only.”

14 Plaintiffs request approximately 50% of their time opposing Defendants’
15 motion for summary judgment as payable pursuant to state law. The Court finds
16 that Defendants’ Summary Judgment motion focused predominantly on qualified
17 immunity and Plaintiffs’ *Monell* claim – neither of which are applicable under
18 California law or entwined with Plaintiffs’ §52.1 claims. Accordingly, the Court
19 finds that the majority of the services rendered on Plaintiffs’ opposition to the
20 summary judgment motion should be paid pursuant to §1988 as “§1983 only”
21 time. Because Plaintiffs do not distinguish the hours or the fee specific to their
22 opposition to summary judgment and the Court has no other means of calculating
23 an appropriate reduction, the Court therefore adopts Defendant’s adjusted fee for
24 services rendered opposing the summary judgment motion (\$57,075.00). (*See*
25 Declaration of Robert M. Bruning in Support of Defendants’ Opposition to
26 Plaintiffs’ Attorney’s fees and Costs (“Bruning Decl.”), Ex. C, p. 2 (Dkt. No.

27 _____
28 ⁶ Plaintiffs’ “*Monell* claim” refers to Plaintiffs’ §1983 claims against COLA and LASD based on *Monell v. Dept. of Soc. Svcs.*, 439 U.S. 658 (1978).

1 680.) Plaintiffs' final fee will therefore be reduced by \$84,479.10, reflecting the
2 difference between Plaintiffs' requested fee for opposing Defendants' Motion for
3 summary judgment (\$141,554.10) and Defendants' adjusted amount (\$57,075.00).
4 (*Id.*)

5 The Court finds Defendants' additional challenges to Plaintiffs' requested
6 apportionment unpersuasive. Plaintiffs provide adequate evidence supporting the
7 apportionment of fees between state and federal law and counsel's exercise of
8 careful billing judgment. It would be unreasonable for this Court to determine,
9 without specific rebuttal evidence, that Plaintiffs' success under §52.1 can be
10 attributed to only 25% of their work (despite Defendants' request that the Court do
11 so). Defendants' request that fees be apportioned such that 75% of Plaintiffs' fee
12 is payable pursuant to §1988 and 25% pursuant to §52.1 is unsupported and would
13 not compensate Plaintiffs for their success on state law claims. Defendants fail to
14 meet their "burden of rebuttal," which requires submission of evidence ...
15 challenging the accuracy and reasonableness of the ... facts asserted by the
16 prevailing party in its submitted affidavits." *Chaudhry*, 751 F.3d at 1110 (quoting
17 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)). The Court
18 finds that Plaintiffs' requested apportionment is reasonable with a reduction to
19 more accurately reflect the classification of hours spent opposing Defendants'
20 summary judgment motion.

21 **B. Lodestar Analysis**

22 **1. Reasonable Rates Under PLRA**

23 For the 1260.4 hours that Plaintiffs' counsel worked exclusively on §1983
24 claims, Plaintiffs request reasonable rates that comply with the PLRA cap.
25 Plaintiffs base their request on the publicly available Criminal Justice Act ("CJA")
26 hourly rates which are as follows:
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§ 230.16(a) Non-Capital Hourly Rates	
If services were performed between...	The maximum hourly rate is...
03/01/2014 to present	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125
03/11/2009 to 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94
01/01/2006 through 05/19/2007	\$92
05/01/2002 through 12/31/2005	\$90

For fees paid pursuant to §1988 Plaintiffs request an hourly rate capped at \$189 per hour, a rate based on 150% of the rate paid to court-appointed attorneys in this district (150% of \$126). Plaintiffs request this rate for their attorneys as well as for some non-attorney billers. *See Perez*, 632 F.3d at 555 (holding that the PLRA cap is the same for attorneys and paralegals).

Plaintiffs’ requested rates for all of their attorneys and staff on this matter for fees paid pursuant to §1988 are as follows:

§ 1988 / PLRA Fees					
Attorney/Biller	Yrs Practice (Grad Date)	Rate	Hours (Merits)	Hours (Fee/Cost) ⁷	Total
Barry Litt	45 (1969)	\$189	18.9	7.7	\$5,027.40
Ronald Kaye	26 (1988)	\$189	373.0	6.2	\$71,668.80
David McLane	28 (1986)	\$189	177.0	0.9	\$33,623.10
James Muller	28 (1986)	\$189	211.5	3.2	\$40,578.30
Kevin LaHue	10 (2004)	\$189	134.2	.3	\$25,420.50
Caitlin Weisberg	6 (2008)	\$189	159.2	4.7	\$30,977.10
Julia White	Sr. Paralegal	\$189	47.4	25.9	\$13,853.70

⁷ Hours listed as “Fee/Cost” hours are those hours spent working on the fee motion and on the bill of costs. (*See* Dkt. No. 669, ¶ 44.)

1	Veronica Aguilar	Paralegal	\$175	5.7	0	\$997.50
2	Heath White	High tech	\$189	6.3	0	\$1,190.70
3		paralegal				
4	Lisa Mikhailova	Paralegal /	\$175	24.1	.7	\$4,340.00
5		Legal Asst.				
6	John Srebalus	Paralegal /	\$175	.3	0	\$52.50
7		Legal Asst.				
8	Vi Hohuynh	Law Clerk	\$189	102.8	0	\$19,429.20
9	SUBTOTAL:			1260.4	49.6	\$247,758.80
10	SUBTOTAL AFTER 3% REDUCTION:⁸					\$239,744.04
11	Plaintiffs' PLRA Contribution:					-\$9,500
12	TOTAL:					\$230,244.04

Nearly a month after this Motion was taken under submission, Plaintiffs filed a “Notice of Errata” and requested supplemental briefing to argue for an increase in Plaintiffs’ requested rates for their “§1983 only” work. (Dkt. 709, 710, 712, 713.) The Court acknowledges that the maximum rate established under the PLRA is based on the “authorized” CJA rates, and not the “funded” CJA rates. *Webb*, 285 F. 3d at 839. However, the Court finds that Plaintiffs’ requested rates (\$175-\$189) do not violate the attorney’s fee rate cap established by the PLRA and these rates result are reasonable and were used by the Court in calculating a reasonable fee.

2. Reasonable Rates Under 52.1(h) (Not Subject to PLRA Cap)

Plaintiffs’ requested rates and hours for their non-PLRA capped hours, the hours attributable to their §52.1 claims, are as follows:

⁸ To account for any inaccurate or duplicative billing, Plaintiffs implemented an across-the-board three percent deduction on all fees awarded pursuant to both §1988 and §52.1(h).

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§ 52.1(h) Fees					
Atty/Biller	Yrs Practice (Grad Date)	Rate	Hours (Merits)	Hours (Fee/Cost)⁹	Total
Barry Litt	45 (1969)	\$975	37.4	27.2	\$62,985.00
Ronald Kaye	26 (1988)	\$775	1077.9	21.9	\$852,345.00
David McLane	28 (1986)	\$775	429.2	3.3	\$335,187.50
James Muller	28 (1986)	\$700	946.4	11.5	\$670,530.00
Kevin LaHue	10 (2004)	\$600	448.2	1.2	\$269,640.00
Caitlin Weisberg	6 (2008)	\$500	458.9	16.8	\$237,850.00
Julia White	Sr. Paralegal	\$295	155.7	92.0	\$73,071.50
Veronica Aguilar	Paralegal	\$175	77.5	0	\$13,562.50
Heath White	High Tech Paralegal	\$235	80.0	0	\$18,800.00
Lisa Mikhailova	Paralegal / Legal Asst.	\$175	218.5	2.5	\$38,675.00
John Srebalus	Paralegal / Legal Asst.	\$175	16.0	0	\$2,800.00
Vi Hohuynh	Law Clerk	\$250	467.1	0	\$116,775.00
SUBTOTAL:			4412.8	176.4	\$2,692,221.50
SUBTOTAL AFTER 3% REDUCTION:					\$2,611,454.86
SUBTOTAL WITH 2.0 MULTIPLIER (merits only):					\$5,046,762.56
TOTAL (2.0 Multiplier):					\$5,222,909.72

⁹ As explained in The Corrected Declaration of Barrett S. Litt in Support of Plaintiffs' Motion for Award of Attorneys' Fees, hours listed as "Fee/Cost" hours are those hours spent working on the fee motion and on the bill of costs. (See Dkt.No. 669, ¶ 44.)

1 Plaintiffs submit declarations attesting to the reputation, skill and
2 experience of Plaintiffs' counsel. (*See, e.g.*, Declaration of Donald W. Cook in
3 support of Plaintiffs' Motion for Award of Attorney's Fees ("Cook Decl.") (Dkt.
4 No. 649); Declaration of William J. Genego in Support of Plaintiffs' Motion for
5 Award of Attorney's Fees (Dkt. No. 649-1).) Plaintiffs also submit declarations
6 from Carol Sobel and Barrett S. Litt demonstrating comparable attorneys' fee rates
7 in this District for attorneys with similar experience to Plaintiffs' counsel.
8 (Declaration of Carol Sobel in Support of Plaintiffs' Motion for Attorey's Fees
9 ("Sobel Decl.") (Dkt. No. 648); Litt Decl.)

10 Plaintiffs provide evidence that Barrett S. Litt, who served predominantly in
11 a consulting role on this case, is considered one of the leading civil rights
12 attorneys in the country. (*See* Sobel Decl. ¶10.) Plaintiffs' requested rate of \$975
13 per hour for Attorney Litt is supported by his strong reputation and experience.

14 Ronald M. Kaye was lead counsel for Plaintiffs. The Court is familiar with
15 Attorney Kaye from his practice at the Federal Public Defenders and through
16 observing him during the course of this litigation. Plaintiffs have submitted
17 several declarations attesting to Attorney Kaye's outstanding reputation, skill, and
18 experience. (*See, e.g.*, Declaration of Sean Kennedy in Support of Plaintiffs'
19 Motion for Award of Attorney's Fees (Dkt. No. 649-3); *see also* Declaration of
20 Samuel Paz in Support of Plaintiffs' Motion for Award of Attorney's Fees (Dkt.
21 No. 649-4).) Attorney Kaye has been engaged in the practice of civil rights law
22 for the past ten years and has extensive criminal trial experience. The Court finds
23 his requested rate of \$775 is reasonable and supported by evidence.

24 This Court is familiar with David M. McLane from his past appearances
25 before this Court as a Federal Public Defender and through observing his work on
26 this case. Plaintiffs submitted declarations attesting to Attorney McLane's
27 outstanding reputation, skill, and experience in criminal defense and more recently
28 in civil rights litigation. (*See, e.g.*, Declaration of Brian A. Vogel in Support of

1 Plaintiff's Motion for Award of Attorney's fees (Dkt. No. 649-6.) Attorney
2 McLane has been engaged in the practice of civil rights law for the past ten years
3 and has many years of criminal trial experience. The Court finds his requested rate
4 of \$775 is reasonable and supported by the evidence.

5 James M. Muller has been practicing law for 28 years with a focus in the
6 area of police misconduct. Plaintiffs submitted declarations attesting to his skill,
7 experience and reputation. (*See, e.g.*, Declaration of Carol A. Watson in Support
8 of Plaintiffs' Motion for Award of Attorney's Fees (Dkt. No. 649-7); Sobel Decl.
9 ¶ 11.) The Court finds the requested \$700 per hour reasonable based on the
10 evidence presented.

11 The Court similarly finds the requested rates of \$600 for Kevin LaHue
12 (2004 graduate), \$500 for Caitlin Weisberg (2008 graduate), and the requested
13 paralegal/law clerk rates of \$295 to \$175 reasonable based on the evidence
14 presented in the Sobel and Litt Declarations.

15 In the Ninth Circuit, reasonable rates for civil rights cases are not based
16 only on rates offered in similar civil rights claims but rather comparison "extends
17 to all attorneys in the relevant community engaged in 'equally complex Federal
18 litigation,' no matter the subject." *Prison Legal News v. Schwarzenegger*, 608
19 F.3d 446, 445 (9th Cir. 2009) (holding that "the proper scope of comparison is not
20 so limited" as to only other attorneys involved in prison litigation). Plaintiffs
21 provide evidence and case law that their requested rates are comparable to other
22 attorneys in Los Angeles with comparable skill and experience in other complex
23 litigation. (*See* Litt Decl.). The Court finds that this litigation was complex and
24 counsel represented Plaintiffs with noticeable skill and professionalism.
25 Plaintiffs' requested rates are reasonable.

26 3. Reasonable Hours

27 "By and large, the [district] court should defer to the winning lawyer's
28 professional judgment as to how much time he was required to spend on the case."

1 *Chaudhry*, 751 F.3d at 1111 (quoting *Moreno v. City of Sacramento*, 534 F.3d
2 1106, 1112 (9th Cir. 2008)). Courts generally accept the reasonableness of hours
3 supported by declarations of counsel. *See, e.g., Horsford v. Bd. Of Trustees of*
4 *Cal. State Univ.*, 132 Cal. App. 4th 359, 396 (2005) (“[T]he verified time
5 statements of the attorneys, as officers of the court, are entitled to credence in the
6 absence of a clear indication the records are erroneous.”)

7 Counsel’s sworn declarations and attached time records evidence the
8 attorney, paralegal, and law clerk hours spent in this litigation. (*See Weisberg*
9 *Decl.*, Exs. A, B.; *see also Litt Decl.* ¶¶ 30-31, 47-48; Declaration of Ronald O.
10 Kaye in Support of Motion for Attorney’s Fees (“Kaye Decl.”) ¶¶ 5-9, 12, 17-18
11 (Dkt. No. 646); Declaration of James Muller in Support of Motion for Attorney’s
12 Fees (“Muller Decl.”) ¶¶ 18-23 (Dkt. No. 647).) Prior to requesting fees, to
13 account for any arguable duplication, counsel applied a 3% across the board
14 reduction of hours. In total, Plaintiffs request 5,899.2 hours (adding both merits
15 and fee hours requested under state and federal law). The Court finds that
16 Plaintiffs’ requested hours are reasonable and supported by counsel’s verified
17 statements.

18 **(i) Muller Pre-Trail Work**

19 Attorney Muller, who began as the sole attorney for Plaintiffs, submitted
20 billing entries totaling 55.30 hours for a two-year period prior to the filing of the
21 August 25, 2010 complaint. Defendants argue that these hours are unjustified and
22 that 48.0 of these hours pertained to an unrelated class-action matter in state court.
23 Upon a review of the evidence, the Court finds that Muller’s pre-trial work was
24 related to this case and Muller’s hours spent were reasonably expended.¹⁰

25 ¹⁰ In their reply brief and supporting declarations, Plaintiffs acknowledge that 4.8 hours requested by Plaintiffs in
26 the Motion could have been excluded from their requested hours. (*See James S. Muller in Support of Corrected*
27 *Motion for Attorney Fees (“Muller Reply Decl.”)*, (Dkt. No. 689); *see also Declaration of Caitlin S. Weisberg in*
28 *Support of Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Award of Attorney’s Fees*
(“Weisberg Reply Decl.”) (Dkt. No. 692), ¶ 6.) However, Plaintiffs preemptively applied a 3% reduction to all of
their hours, and this reduced Plaintiffs’ request by significantly more than 4.8 hours. An additional reduction by
this Court is therefore not necessary.

1 **(ii) Deposition Attendance**

2 Defendants challenge hours for duplicative attendance at six depositions,
3 totaling an excess of 35.4 hours. The Court finds, because this case involved
4 several Plaintiffs and Defendants and two Plaintiffs’ law firms, it is reasonable
5 that more than one Plaintiffs’ attorney was present at depositions. A second
6 attorney may serve as a sounding board or be necessary to assure that valuable
7 testimony (for all Plaintiffs) is obtained during the limited time allotted in
8 deposition. *See Moreno*, 534 F.3d at 1112 (“By and large, the court should defer
9 to the winning lawyer’s professional judgment as to how much time he was
10 required to spend on the case; after all, he won, and might not have, had he been
11 more of a slacker”). The Court, therefore, does not reduce Plaintiffs’ requested
12 fee based on duplicative attendance at depositions.

13 **(iii) “Unsuccessful” Claims**

14 The Court may fully compensate for work that is “expended in pursuit of
15 the ultimate result achieved” even where “the plaintiff failed to prevail on every
16 contention raised in the lawsuit.” *See Hensley*, 461 U.S. at 435; *see also Dang v.*
17 *Cross*, 422 F.3d 800, 813 (9th Cir. 2005). Defendants argue that Plaintiffs’ hours
18 should be reduced because some individual Defendants were dismissed or
19 prevailed at trial and because Plaintiffs did not succeed on all motions. Plaintiffs
20 are not required to succeed on all claims against all Defendants to demonstrate full
21 success or excellent results. *See Dang*, 422 F.3d at 813. The correct analysis
22 hinges on whether Plaintiffs’ work pertaining to unsuccessful motions or non-
23 liable Defendants was work related to Plaintiffs’ ultimate success. *See Hensley*,
24 461 U.S. at 435; *see also Chavez*, 47 Cal. 4th at 989. Here, Plaintiffs succeeded
25 on all claims, and the hours requested that pertain to unsuccessful motions and
26 non-liable Defendants directly relate to Plaintiffs’ successful claims. Plaintiffs
27 may therefore recover a fully compensatory fee. *See id.*

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(iv) Travel Time

1 Reasonable travel time by the attorney is compensable, at full rates, if that is
2 the practice in the community. *See Suzuki v. Yuen*, 678 F.2d 761, 764 (9th Cir.
3 1982) (“calculation of fees for prevailing civil rights plaintiffs is to be the same as
4 in traditional fee arrangements and that all reasonable time spent is to be
5 compensated”). In Los Angeles, the practice is to compensate at full rates for
6 travel time, even in CJA cases. (*See* Declaration of Ronald O. Kaye in Support of
7 Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Award of
8 Attorneys’ Fees (“Kaye Reply Decl.”) ¶13.) Plaintiffs also provide testimony that
9 time was only billed for travel necessary for the proper representation of the client,
10 such as for court appearances and depositions. (Declaration of Barrett S. Litt in
11 Support of Plaintiffs’ Reply to Defendants’ Opposition to Motion for Attorneys’
12 Fees (“Litt Reply Decl.”) ¶ 30.) The Court finds that Plaintiffs’ request for
13 counsel’s travel time is reasonable.

C. Lodestar “Multiplier”

15 Plaintiffs request a 2.0 multiplier to compensate counsel for excellent work
16 and for the risk counsel assumed in litigating Plaintiffs’ case. “The purpose of a
17 fee enhancement, or multiplier, for contingent risk is to bring the financial
18 incentives for attorneys enforcing important constitutional rights... into line with
19 incentives... they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at
20 1132. California courts consider the following “*Ketchum* factors” when
21 determining if a lodestar enhancement is warranted: (1) the novelty and difficulty
22 of the questions involved; (2) the skill counsel displayed in litigating the issues;
23 (3) the extent to which the nature of the litigation precluded other employment by
24 the attorneys; and (4) the contingent nature of the fee award. *Id.* Enhancements,
25 or multipliers, are “intended to approximate market-level compensation for such
26 services, which typically includes a premium for the risk of nonpayment or the
27 delay in payment of attorney fees.” *Id.* at 1138. Courts may also consider factors
28

1 such as the source from which the fee will be paid when determining whether or
2 not to apply a lodestar multiplier. *Serrano v. Priest*, 20 Cal. 3d 25 (1977).

3 The Court finds that Plaintiffs' requested multiplier is justified based on the
4 financial risk Plaintiffs' counsel assumed in litigating this case on a contingency
5 basis, the difficulty of this case, and based on counsel's demonstrated skill. To
6 litigate this case, counsel invested \$3.4 million in services rendered and incurred
7 substantial costs, without any interim payments from the Plaintiffs. Counsel faced
8 substantial obstacles to success, including representing Plaintiffs that were
9 routinely described as the "worst of the worst" prisoners who were challenging the
10 actions of highly ranked Sheriff's office officials and supervisors (including the
11 former Captain and Sergeants in MCJ). Further, in litigating this case for several
12 years, through a jury trial, was unable to accept other cases. Plaintiffs faced
13 aggressive opposition. In working to secure Plaintiffs' civil rights, counsel faced a
14 serious risk of receiving no payment for their performance of thousands of hours
15 of work over four years. Counsel also risked obtaining no reimbursement for their
16 sizeable financial investment. This Court, accordingly, finds that a multiplier is
17 justified to fully compensate Plaintiffs' counsel for litigating this difficult civil
18 rights lawsuit.

19 The Court has considered the fact that the cost of this litigation will "fall on
20 the shoulders of California taxpayers." *See Nw. Energetic Servs., LLC v.*
21 *California Franchise Tax Bd.*, 159 Cal. App. 4th 841, 881 (2008). However, the
22 Court finds that this consideration does not justify reducing the lodestar multiplier.
23 Refusing a multiplier in a civil rights case based only on the source of the fee
24 would "effectively immunize large or politically powerful defendants" engaging
25 in conduct that harms the public. *Horsford v. Bd. of Trustee*, 132 Cal. App. 4th
26 359, 399-401 (2005). A 2.0 multiplier will be applied to Plaintiffs' fee for
27 services rendered the merits of this litigation. The Court awards \$5,046,762.56 in
28 attorney's fees for Plaintiffs' merits work pursuant to 52.1(h).

1 **D. PLRA Contribution**

2 This jury awarded Plaintiffs \$950,000 in judgment. (Dkt. No. 626.) In
3 order to comply with the PLRA attorney’s fee restrictions, Plaintiffs request 1% of
4 Plaintiffs’ judgment be applied as a contribution to their requested attorney’s fee
5 award. Neither the plain language of the statute, nor the legislative history of the
6 attorney fees provisions of the PLRA, provide guidance in determining what
7 percent of the plaintiffs’ award should be used to offset an attorney fee award.
8 However, courts have found that the PLRA contribution should not be a “a rote or
9 mechanical exercise.” *Morrison v. Davis*, 88 F. Supp. 2d 799, 811 (S.D. Ohio
10 2000) (finding a PLRA contribution of \$1 was not too small “because the case
11 involved “a significant violation of the Plaintiff’s rights” and the jury sent a “clear
12 signal that the [d]efendants should be punished”). The Court finds that a 1%
13 contribution (\$9,500) is supported by the jury’s finding that Defendants’ conduct
14 (including malicious violence leaving some Plaintiffs permanently injured)
15 warranted punitive damages.

16 **E. PLRA Cap**

17 The total judgment in this case, for Plaintiffs success on both §1983 and
18 §52.1 is \$950,000. Accordingly, even if this Court considered half of that
19 judgment (\$475,000) to be Plaintiffs’ judgment under §1983, Plaintiffs’ requested
20 fee pursuant to §1988 (\$230,244.04) does not violate the PLRA cap.

21 **F. Cost and Litigation Expenses**

22 On February 20, 2014, Plaintiffs filed an application to the Clerk to tax
23 costs against Defendants. (Dkt. Nos. 629, 632.) Plaintiffs requested a total of
24 \$35,313.46 in costs. (Dkt. No. 632.) This application is pending. Plaintiffs
25 request an additional \$53,934.77 in costs in this Motion. Plaintiffs are directed to
26 apply for all costs pursuant to Local Rule 54-3. By this Court’s order, Plaintiffs
27 may submit an amended application to tax costs with the clerk of the court no later
28 than January 12, 2015.

1 **VI. PLAINTIFFS' MOTION TO STRIKE PORTIONS OF THE**
2 **DECLARATION OF EXPERT ROBERT M. BRUNING**

3 Plaintiffs move to strike portions of the Defendants' Declaration of Robert
4 Bruning under Fed. R. Evid. 702 as improper expert testimony. (Dkt. No. 691.)
5 Mr. Bruning declares that he "specialize[s] in acting as an expert witness in
6 matters involving legal fees disputes" and, along with his partner, has reviewed
7 and audited hundreds of cases involving attorney's fee requests. (Bruning Decl.
8 ¶2.) However, there is no evidence that Mr. Bruning has any experience specific to
9 civil rights litigation nor that Mr. Bruning has any familiarity with attorney's fees
10 under the PLRA. The Court finds that Mr. Bruning has experience and knowledge
11 qualifying him as an expert in analyzing attorney's fees and billing records,
12 generally. The Court, however, finds that Mr. Bruning is not an expert qualified
13 to opine on the reasonableness of attorney's fees in the civil rights context nor an
14 expert on the PLRA. Further, the legal opinions provided by Mr. Bruning in his
15 declaration are not helpful to the Court and are not properly considered expert
16 testimony under *Daubert*. See *Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S.
17 579, 589 (1993); see also *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th
18 Cir. 2011) (holding that an expert's "inference or assertion must be derived by the
19 scientific method" to be admissible). The Court finds that Sections 4(A), 4(B),
20 and 4(C) of Mr. Bruning's declaration are not within his area of expertise and
21 contain analysis of law, not fact.¹¹ These sections are therefore stricken pursuant
22 to *Daubert*. Additionally, Mr. Bruning's declaration violates the Court's local
23 rules. See L.R. 7-7 ("Declarations shall contain only factual, evidentiary matter
24 and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4)";
25 see also L.R. 11-6 ("appendices shall not include any matters which properly
26 belong in the body of the memorandum of points and authorities"). The Court
27 strikes all legal opinions in Mr. Bruning's declaration. See *Nationwide Transp.*

28 ¹¹ Mr. Bruning's declaration does not provide consistent section numbering. For additional clarity, the Court is referring to the first Section 4, which begins on page 7 of the declaration.

1 *Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008) (“an expert
2 witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an
3 ultimate issue of law”). The Court considers only Mr. Bruning’s quantification of
4 Plaintiffs’ counsel’s billing records and the evidence establishing the time
5 Plaintiffs’ counsel spent preparing the opposition to Defendants’ summary
6 judgment motion.

7 **VII. DEFENDANTS’ MOTION TO STRIKE DECLARATIONS IN**
8 **SUPPORT OF PLAINTIFFS’ REPLY**

9 Defendants filed Objections to and a Request to Strike the Attorney
10 Declarations filed in support of Plaintiffs’ Reply. (Dkt. No. 701.) Defendants
11 oppose declarations provided by Attorneys Kaye, Litt, and Weisberg (Dkt. Nos.
12 688, 690, 692) based on these declarations’ length and inclusion of legal
13 argument. Specifically, Defendants argue that Attorneys Litt, Weisberg, and Kaye
14 proffer improper legal arguments addressing Mr. Bruning’s opinions. As this
15 Court strikes Mr. Bruning’s legal opinions, this Court similarly strikes Plaintiffs’
16 declarations addressing the legal opinions in the Bruning declaration. (Litt Reply
17 Decl. ¶¶ 3, 4, 5, 6, 17, 25; Kaye Reply Decl. ¶¶ 10, 11.) These legal opinions
18 violate this Court’s Local Rules 7-7 and 11-6 and are unnecessary and unhelpful.
19 In the declarations supporting Plaintiffs’ reply, the Court considers only those
20 statements based on the personal knowledge of the declarants.

21 **VIII. CONCLUSION**

22 The Court GRANTS the Plaintiffs’ Motion for Attorneys’ Fees. Plaintiffs’
23 fee for counsel’s success on §1983 claims is \$239,744.04 paid pursuant to §1988,
24 with \$9,500 of this amount paid as a contribution from Plaintiffs’ judgment.
25 Plaintiffs’ fee pursuant to §52.1 is \$5,138,430.62.¹² The total fee award is
26 \$5,378,174.66 (\$9,500 contributed from Plaintiffs’ judgment).

27 Plaintiffs’ counsel may file a renewed application to tax costs with the

28 ¹² Plaintiffs’ requested amount of \$5,222,909.72 less \$84,479.10 for reductions based on Plaintiffs’ opposition to Defendants’ summary judgment motion.

1 Clerk of this Court no later than January 12, 2015.

2 The Court GRANTS Plaintiffs' Motion to Strike Portions of the Declaration
3 of Expert Robert M. Bruning. (Dkt. No. 691.) The Court also GRANTS the
4 Defendants' Motion to Strike and strikes portions of the Plaintiffs' declarations
5 offered in support of Plaintiffs' reply. (Dkt. No. 701.)
6

7 **IT IS SO ORDERED.**

8
9 DATED: December 26, 2014

CONSUELO B. MARSHALL
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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11 (Additional Counsel for Plaintiffs on Following Page)

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

15 JOSE ANTONIO FRANCO-
16 GONZALEZ, et al.,

17 *Plaintiffs-Petitioners,*

18 v.

19 ERIC H. HOLDER, Jr., Attorney
20 General, et al.,

21 *Defendants-Respondents.*

Case No. 10-CV-02211 DMG (DTBx)

**DECLARATION OF CAROL
SOBEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES**

Honorable Dolly M. Gee

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DECLARATION OF CAROL A. SOBEL

I, CAROL A. SOBEL, declare:

1. I am an attorney admitted to practice before the Supreme Court of the State of California and the Central District of California. Because few, if any, of the public interest lawyers involved in this litigation are paid by clients to establish a market rate, I am submitting this declaration to provide the court with information concerning reasonable market rates in support of the attorney fees requested by Plaintiffs’ counsel in the above-captioned matter. I have personal knowledge of the facts set forth below and, if I were called to testify to those facts, I could and would do so competently.

2. I graduated from law school in 1978 and was admitted to practice in December of that same year. Until April of 1997, I was employed by the ACLU Foundation of Southern California (ACLU). For the six years prior to leaving, I was a Senior Staff Counsel. Throughout the time that I was an attorney at the ACLU, my primary areas of litigation were First Amendment rights and police litigation. A true and correct copy of my résumé is attached at Exhibit 1. I have received numerous awards for my work in the area of First Amendment litigation and, more recently, on behalf of homeless persons. I have been qualified as an expert in ethics and practices of public-interest legal groups, including once before the State Bar and once in the Los Angeles Superior Court.

3. For many years, I have regularly gathered and submitted declarations containing information about reasonable market rates in support of fee motions filed by civil rights lawyers in private practice and public interest attorneys in Los Angeles. My declarations have been approved by numerous courts as evidence of reasonable market rates throughout California. The decisions that have noted my declarations favorably include, among others, *Nadarajah v. Holder*, 569 F.3d 906, 916-917 (9th Cir. 2009); *Orantes-Hernandez v. Holder*, 713 F.Supp.2d 29, 963-964(C.D.Cal.2010); *Torrance*

1 *Unified Sch. Dist. v. Magee*, CV 07-2164 CAS (Rzx) (C.D.Cal. 2008), [2008
2 U.S. Dist. Lexis 11 95074, 21]; *Atkins v. Miller*, CV-01-01574 DDP (C.D.Cal
3 2007); *Jochimsen v. County of Los Angeles*, B223518 (2d Dist. June 23, 2011)
4 (unpublished); *Dugan v. County of Los Angeles*, cv 11-08145 CAS (C.D. Cal.
5 Mar. 3, 2014); and *Flores v. City of Westminster*, SA-CV-11-0278 (C.D. Cal.
6 2014). In *Jochimsen*, the appellate court found me qualified as an expert on
7 rates.

8 4. My current billing rate is \$875 an hour for complex civil rights
9 litigation. Although I have settled several cases calculating the lodestar on my
10 annual rate, I have limited my discussion in this paragraph to the contested fee
11 awards over the last six years in which judges of this Court found my rate to be
12 reasonable. I was awarded fees in 2008 at \$695 an hour by the Hon. Manuel
13 Real in *Jones v. City of Los Angeles*, 444 F.3d 1118 (2006), *vacated per*
14 *settlement* 505 F.3d 1006 (9th Cir. 2007. In 2009, I was awarded fees at \$710 an
15 hour by the Hon. Dean Pregerson in *Fitzgerald v. City of Los Angeles*, 2009 U.S.
16 Dist. LEXIS 34803 (C.D. Cal. 2009). Later in 2009, I was awarded fees at the
17 same rate by the Hon. A. Howard Matz in *Multi-Ethnic Immigrant Worker*
18 *Organizing Network v. City of Los Angeles*, cv 07-3072 AHM (C.D. Cal.), a
19 hybrid class-action. Exhibit 2. In 2010, I was awarded fees at \$725 an hour by
20 the Hon. S. James Otero in *Long Beach Area Peace Network v. City of Long*
21 *Beach*, 574 F.3d 1011 (9th Cir. 2009). Although I rarely have paying clients, I
22 was paid at \$795 an hour in 2012 in a case in which I defended an outside
23 director of a small bank taken over and sued by the Federal Deposit Insurance
24 Corporation (“FDIC”) in an attempt to recover investment losses. *Federal*
25 *Deposit Insurance Company v. Faigin, et al.*, cv-12-03448 DDP (CWx) (C.D.
26 Cal.). Most recently, the Ninth Circuit awarded me full fees in *CPR for Skid*
27 *Row v. City of Los Angeles*, 779 F.3d 1098 (9th Cir. 2015). The 2015 rate of
28 \$875 an hour is shown in the motion filed with the Court, a copy of which is

1 attached at Exhibit 7.

2 5. As Senior Staff Counsel at the ACLU, I was responsible for
 3 preparing many fee motions in cases where the ACLU represented the prevailing
 4 party. Since the ACLU does not bill clients on an hourly basis, I had to obtain
 5 information to establish market rates for the ACLU lawyers. I did this annually
 6 by telephoning partners at firms who knew the ACLU lawyers in question so
 7 that they could make an informed judgment about the comparable skill levels of
 8 attorneys at their firms whose rates were then used to set ACLU billing rates.

9 6. Since entering private practice, I have continued to survey firms
 10 each year to obtain relevant comparisons for billing rates as I do not charge my
 11 clients for representation and continue to do the same type of cases as I did at the
 12 ACLU. My cases are brought on behalf of low-income persons, who are unable
 13 to afford legal representation. I generally survey annual billing rates at firms the
 14 first time each year I prepare a fee motion or enter into settlement discussions
 15 regarding fees. I apply this methodology based on my understanding of the U.S.
 16 Supreme Court in *Blum v. Stenson*, 465 U.S. 886 (1984), holding that
 17 representation by a non-profit legal group is not a factor in arriving at billing
 18 rates for attorneys of comparable skill, experience and reputation. I also
 19 research information on rates approved for lawyers at boutique civil rights firms
 20 and public-interest organizations whose skills and experience are comparable to
 21 those of attorneys who do other types of complex litigation.

22 7. I understand that Plaintiffs are seeking market rate fees under both
 23 the Rehabilitation Act and enhanced EAJA fees for the following attorneys:

24	Attorney	Entity	Grad.	2015	2014	2013	2012	2011	2010
25	James Preis	MHAS	1978	\$875	\$850	\$825	\$775	\$725	\$685
26	Judy Rabinovitz	ACLU IRP	1985	\$825	\$790	\$760	\$720	\$680	\$630
27	Michael Steinberg	Sullivan	1986	\$1040	\$1020	\$1010	\$1000	\$950	\$890
28	Judy London	Pub.Counsel	1990	\$775	\$750	\$725	\$680	\$630	\$600

1	Matt Adams	NW IRP	1998	\$710	\$680	\$650	\$620	\$580	\$550
2	A.Arulanantham	ACLU SoCal	1999	\$690	\$670	\$640	\$600	\$550	\$525

3 I am informed that the rates for Michael Steinberg are discounted from his
 4 customary billing rate.

5 8. In addition to the attorneys listed above, I am informed that
 6 Plaintiffs are seeking market-rate fees under the Rehabilitation Act for the
 7 attorneys listed in the table below, but not enhanced EAJA rates.

8	Attorney	Entity	Grad.	2015
9	Victoria Lopez	ACLU AZ	2001	\$640
10	Bardis Vakili	ACLU SDIC	2006	\$535
11	Talia Inlender	Pub. Counsel	2007	\$535
12	Sean Riordan	ACLU SDIC	2007	\$535
13	James Lyall	ACLU AZ	2007	\$535
14	Shawn Lichaa	Sullivan	2007	\$865
15	Damion D.D. Robinson	Sullivan	2007	\$865
16	Marisol Orihuela	ACLU SoCal	2008	\$510
17	Asel Aliyasova	Sullivan	2008	\$850
18	Theresa Buckley	Sullivan	2008	\$850
19	Alexa Lawson-Remer	Sullivan	2009	\$800
20	Sarah Mehta	ACLU IRP	2009	\$490
21	Victor Leung	ACLU SoCal	2009	\$490
22	Jennifer Stark	ACLU SoCal	2009	\$490
23	Riddhi Mukhopadyay	NW IRP	2009	\$490
24	Antonia Stamenova-Dancheva	Sullivan	2009	\$800
25	Michael Murtagh	Sullivan	2010	\$750
26	Carmen Iguina	ACLU SoCal	2010	\$475
27	Esha Bhandari	ACLU IRP	2010	\$475
28	Thea Bernas	Pub. Counsel	2011	\$450
	Stephen Kang	ACLU IRP	2011	\$450

Sofia Corona	ACLU SDIC	2014	\$340
Lauren Cruz	Sullivan	2014	\$370

9. Of the attorneys who seek enhanced EAJA rates by this motion, I am most familiar with James Preis, Judy Rabinovitz, Judy London and Ahilan Arulanantham. Most of these attorneys I know primarily by reputation. I have known James Preis for more than 30 years. Although I never worked with him on a case, he co-counseled several cases with other staff attorneys at the ACLU when I was there. In my experience, he is widely regarded as the expert on mental health litigation. Similarly, I am of the opinion that Judy Rabinovitz and Judy London are both widely respected and highly skilled immigration attorneys. I have been at award presentations for each of them recently where there experience and accomplishments have been detailed.

10. Ahilan Arulanantham and I worked together on several cases, including *Barakat v. Arrellano*, CV 05-08635 SVW, a de novo hearing on the denial of a naturalization application involving a one-week trial in the District Court in June, 2006. We have also worked together on other immigration-related matters that, ultimately, were resolved without litigation. Based on my discussions with other attorneys on *Barakat*, including Georgetown law professor David Cole, and other immigration attorneys who have worked with Mr. Arulanantham, I am of the opinion that he enjoys an exceptional reputation as an attorney and displays skills and experience far beyond those of most attorneys practicing for 16 years.

11. Finally, although they are only seeking market rates for 2015, I know three of the ACLU attorneys. I know Sean Riordan and Bardis Vakili. I have spoken with them about their litigation at various times and reviewed briefs written by them. In addition, before he transferred to the ACLU of San Diego, Mr. Vakili and I participated in a coalition working on homelessness issues in Orange County. I also have known Marisol Orihuela since she was a summer

1 student at the ACLU after her first year of law school. She assisted on the
2 *Barakat* case. I continued to have contact with her and an opportunity to
3 observe her work during the years she was at the ACLU as a fellow and then a
4 staff attorney. For those attorneys I do not know personally, I reviewed
5 materials on line regarding each attorney's experience, successful litigation they
6 have brought, and recognition they have received for their work. With these
7 factors in mind, I believe that all are highly skilled and enjoy exceptional
8 reputations as such.

9 12. Based on my knowledge of billing rates for lawyers of similar skill,
10 reputation and experience in the greater Los Angeles area, I am of the opinion
11 that the hourly compensation sought for these attorneys is well within the range
12 of reasonable market rates in Los Angeles. I base this opinion on the court
13 orders and declarations of counsel identified below and attached as exhibits to
14 my declaration. Each exhibit is a true and correct copy of the document as it
15 appears in the Court's records, bearing the ECF filing header for documents
16 from the federal courts and the filing stamp for state court documents.

17 **JAMES PREIS - 1978**

18 13. Mr. Preis and I have been practicing the same length of time. As
19 stated above, in my experience in the civil rights community in Los Angeles
20 over the past 37 years, James Preis is widely recognized as the expert on mental
21 health issues. I was informed by Mr. Preis that he was awarded fees at the rate
22 of \$685 an hour in 2010 by former Judge Matz. This is below the rate I was
23 awarded by Judge Real two years earlier in *Jones v. City of Los Angeles*, and
24 below the rate of \$710 an hour I was awarded in 2009 by Judges Pregerson and
25 Matz, as well as the 2010 rate of \$725 an hour I was awarded by Judge Otero.
26 Attached at Exhibit 3 is a copy of the fee award issued in *Jones*. See ¶3, *supra*.
27 Because the 2008 award in *Jones* did not set out the individual rates approved, I
28 have also attached a copy of the Court's order on remand, explaining the basis

1 for the 2008 decision and setting out the approved rates. See Exhibit 4.
2 Attached at Exhibit 5 is a copy of the 2010 fee award identified in paragraph 3 in
3 *Long Beach Area Peace Network v. City of Long Beach*, approving the rate of
4 \$725 an hour for me when I was practicing 32 years.

5 14. Attached at Exhibit 6 is an excerpt from the order awarding fees to
6 attorneys at Litt, Estuar and Hadsell & Stormer at 2011 rates in *Pierce v. County*
7 *of Orange*, cv-01-00981 ABC. The case involved both PRLA and non-PRLA
8 fees. In *Pierce*, Barbara Hadsell was awarded market rate fees at \$775 an hour
9 for 2011. Exhibit 6, p.3. I know Ms. Hadsell personally and, on that basis, am
10 aware that we both graduated law school in 1978, the same year as Mr. Preis.
11 Ms. Hadsell's approved rate for 2011 is \$50 an hour higher than the historic rate
12 sought for James Preis. In 2012, I was paid an hourly rate of \$795 an hour to
13 represent John Lannan in an action brought by the Federal Deposit Insurance
14 Corporation ("FDIC") to recover assets from a small regional bank that failed
15 during the recent economic downturn. See para. 3, *supra*. My role in the case
16 was to file a motion to dismiss based on procedural due process, as I would do in
17 a civil rights case.

18 15. I filed no fee motions in 2013. However, I note that Mr. Preis'
19 requested rate of \$825 an hour is only \$30, or 3.75 percent, above the rate I was
20 paid on a non-contingent basis in 2012, as described in the preceding paragraph.
21 In 2014, I filed a motion seeking fees at the rate of \$875 an hour in the Ninth
22 Circuit in *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014). The
23 Circuit approved the entitlement to fees and transferred the matter to the
24 Appellate Commissioner to determine the amount of fees. While that was
25 pending, the fee award in the district court in *Desertrain* was decided by Judge
26 Klausner, who reduced my rate to \$750 an hour, a rate just three percent above
27 the rate I was awarded in 2010 and about an equal percentage below the hourly
28 rate I was paid on a non-contingent basis in 2012. Because of the fee order in

1 *Desertrain*, I did not raise my rate for 2015: however, just a few weeks after the
2 settlement of fees at the reduced rate in *Desertrain*, the Ninth Circuit approved
3 full fees in *CPR for Skid Row v. City of Los Angeles*, 779 F.3d 1098 (9th Cir.
4 2015). Exhibit 7. My rate for the motion was \$875 an hour. Exhibit 8, pp. 7,11.

5 **JUDY RABINOVITZ - 1985**

6 16. Judy Rabinovitz seeks enhanced EAJA rates of \$630 an hour for
7 2010, \$680 for 2011, \$720 for 2012, \$760 for 2013, \$790 for 2014 and \$825 for
8 2015. Ms. Rabinovitz has been practicing the same length of time as V. James
9 DeSimone, a named partner in the Schonbrun, DeSimone, Seplow, Harris &
10 Hoffman firm, and Laurence Paradis, an attorney with Disability Rights
11 Advocates (“DRA”). She has been practicing two years longer than Ron
12 Elsberry, an attorney formerly at DRA and then at Disability Rights Legal
13 Center (“DRLC”), and one year less than civil rights attorney Theresa Traber. I
14 am familiar with each of these attorneys. In my opinion, they have litigation.

15 17. In 2010, Laurence Paradis was awarded fees at \$740 an hour in
16 *Californians for Disability Rights v. California Dept. of Transportation*, 2010
17 U.S. Dist. LEXIS 141030, C 06-05125 SBA (N.D. Cal. 2010), *15. Exhibit 9, p.
18 11. In the same decision, Ron Elsberry was awarded fees at the rate of \$640 an
19 hour. *Id.* Although this decision issued in the Northern District, attorneys at
20 DRA apply the same rates statewide. *See* Exhibit 11, ¶ 17 (Decl. of Laurence
21 Paradis of Disability Rights Advocates (“DRA”) filed in the Ninth Circuit in
22 support of the motion for attorney fees by Disability Rights Legal Center in *Los*
23 *Angeles Unified School District v. Michael Garcia*, Ninth Circuit Case No. 10-
24 55879) (attesting that DRA applies the same rates statewide). The
25 interchangeability of rates in Los Angeles and San Francisco was also noted in
26 *Minor v. Christie*, 2011 U.S. Dist. LEXIS 9219 (N.D. Cal. 2011) (rates are
27 essentially the same in Los Angeles, San Francisco and New York). Also in
28 2010, Jim DeSimone was awarded fees at \$650 an hour in *Taylor-Ewing v. City*

1 of Los Angeles, cv-07-5556 GHK (C.D. Cal. 2010), an excessive force case.
2 Exhibit 12, p. 7.

3 18. In 2012, in *Hickman Mechanical v. FTR International*, LASC Case
4 No. BC 398074, the Court awarded fees to Theresa Traber in an anti-SLAPP
5 case at her 2011 rate of \$675 an hour. Exhibit 13, ¶ 12. Also in 2012, the Hon.
6 David Carter approved the rate of \$695 an hour for Mr. DeSimone in *Charlebois*
7 *v. Angels Baseball, LP.*, 2012 U.S. Dist. LEXIS 91069 (C.D. Cal. 2012), SACV
8 10-0853 DOC. Exhibit 14, pp. 4,10.

9 19. In 2013, based on fees set at 2012 rates, the Court approved fees for
10 Laurence Paradis at the rate of \$800 an hour in *Communities Actively Living*
11 *Free and Independent v. City of Los Angeles*, cv-09-0287 CBM (C.D. Cal. June
12 10, 2013) based on a 2012 rate of \$800 an hour. Exhibit 10, pp. 6-7. Final
13 approval of the settlement was entered in 2013; however, the parties reached
14 agreement on the terms of the settlement in 2012. Exhibit 10, ¶ 3, p. 3, l.15-18.

15 20. In *Hernandez v. Goliath, Inc.*, LASC BC 462953, the Los Angeles
16 Superior Court approved the 2013 rate of \$795 an hour for Theresa Traber in a
17 lodestar crosscheck used in the settlement of a class action. Exhibit 15, p. 5, ¶ 9.
18 Laurence Paradis of DRA attested that his 2013 rate was \$825 an hour. Exhibit
19 11 ¶ 12, Ex. A. Finally, in 2014, in *Rodriguez v. County of Los Angeles*, cv-10-
20 6432 CBM (C.D. Cal. Dec. 16, 2014), fees were awarded to attorneys Ron Kaye
21 (1988), and Dave McLane and Marilyn Bednarski (1986), at \$775 an hour in a
22 police misconduct case. Exhibit 16, p. 14.

23 21. Ms. Rabinovitz's requested 2014 rate of \$790 an hour is two
24 percent above the rate approved for attorneys with one to three years less
25 experience. Her 2015 rate of \$825 an hour is the same as the 2013 rate for Mr.
26 Paradis and less than four percent above the 2013 rate approved for Ms. Traber.
27 Thus, the rates sought for Ms. Rabinovitz are fully consistent with rates
28 approved in the Central District. In fact, in most instances, they are slightly

1 lower that the rates approved for comparable civil rights attorneys.

2 **MICHAEL STEINBERG - 1986**

3 22. I am informed that Michael Steinberg is requesting rates below the
4 customary billing rates he applies to his commercial clients, and below Sullivan
5 & Cromwell LLP rates approved by other courts. He seeks a rate of \$890 for
6 2010. At that time, he was practicing 24 years. I have reviewed the Declaration
7 of Michael Steinberg submitted in support of this fee application, as well as the
8 various court filings and decisions referenced in his declaration regarding rates
9 approved for Sullivan & Cromwell. These rates are the customary billing rates
10 for attorneys at the firm and have been repeatedly approved as reasonable
11 market rates by courts across the country.

12 23. In addition to the evidence submitted by Mr. Steinberg, I am
13 providing additional fee awards in the Los Angeles legal market. These
14 decisions support the reasonableness of the rates sought. In 2009, partners at
15 Gibson Dunn & Crutcher were awarded fees at the rate of \$785 to \$905 an hour
16 in *Rogel v. City of Lynwood*, 194 Cal.App.4th 1319 (2011), where the firm co-
17 counseled with several public interest organizations, including Public Counsel.
18 The trial judge accepted the requested rates but, because the defendant was a
19 government entity, applied a significant negative multiplier, which was reversed
20 by the Court of Appeal. *Id.* A true and correct copy of the declaration of Wayne
21 Barsky, setting out the 2009 billing rates at Gibson Dunn, is attached at Exhibit
22 17. Mr. Barsky, who attested in his declaration that he was a 1983 law graduate,
23 was the highest biller at \$905 an hour. Exhibit 17, p. 14. Fees were also
24 approved at \$785 an hour for Marcellus McRae, then practicing 21 years. *Id.*
25 The 2009 rate for Wayne Barsky is above the rate sought by Mr. Steinberg for
26 2010. Although Mr. Steinberg had two years less experience in 2010, Mr.
27 Barsky's rate would be expected to increase significantly for 2010. With three
28 additional years of experience, Mr. Steinberg's 2010 rate is approximately \$100

1 higher than the 2009 rate for Mr. McRae. It would be reasonable to anticipate
2 that Mr. McRae's rate would also increase significantly for 2010, reducing the
3 differential between his rate and Mr. Steinberg's.

4 24. In 2011, Skadden, Arps, Slate, Meagher & Flom LLP, was awarded
5 attorney fees in the *Mattel v. MGA Entertainment*, 2011 U.S. Dist. LEXIS 85998
6 (C.D. Cal. 2011), cv-04-9049 DOC (C.D. Cal.). The motion sought fees at the
7 rate of \$1,030 an hour for Jason Russell, a 1993 law. I obtained the year of
8 graduation for Mr. Russell by reviewing his profile on the firm's website.
9 Attached at Exhibit 19 is a "Time Summary" identified as Exhibit 50 to
10 Document 10684, setting out the rates for the Skadden counsel. With seven
11 years more experience, Mr. Steinberg's requested 2011 rate is well below the
12 rate for the 1993 Skadden partner. In the same case, Orrick requested fees for a
13 number of attorneys. Attached at Exhibit 20 is a list of the attorneys seeking
14 fees at Orrick. Orrick partner Joshua Rosenkranz is listed with a 2011 rate of
15 \$985 an hour. Exhibit 20, p. 4. According to what I observed on the firm's
16 website, he is a 1986 law graduate, the same year as Mr. Steinberg. Mr.
17 Rosenkranz's 2011 customary billing rate is comparable to Mr. Steinberg's rate.

18 25. As further support for the rates sought by Mr. Steinberg, I have
19 attached at Exhibit 21 an order from the United States Bankruptcy Court for
20 Nevada, approving 2012 compensation rates for attorneys at Milbank Tweed.
21 *Circus and Eldorado Joint Venture*, BK-12-51156 (D.Nev. BK 2012). The 2012
22 standard billing rates for Milbank Tweed set out in the order were \$825 to
23 \$1,140 for partners. Mr. Steinberg's 2012 requested rate of \$1,000 an hour is
24 well within the partner range of compensation approved for Milbank Tweed
25 attorneys.

26 26. Attached at Exhibit 23 is the Declaration of Hannah Cannom of
27 Milbank, Tweed, Hadley & McCloy LLP filed in *Los Angeles Unified School*
28 *District v. Garcia*, Ninth Circuit Case No. 10-55879, cv09-9289 VBF (C.D.

1 Cal.). Milbank was pro bono counsel with the Disability Rights Legal Center
2 (“DRLC”). Ms. Cannom attested that she was a 2006 law graduate with a 2014
3 billing rate of \$800 an hour. Exhibit 23, ¶ 6. She also attested that the 2014
4 customary rate for the partner at Milbank Tweed who worked on the case,
5 Daniel Perry, a 1999 law graduate, was \$1,135 an hour. With 14 years less
6 experience, Mr. Perry’s 2014 rate was higher than Mr. Steinberg’s rate for 2010
7 through 2015.

8 **JUDY LONDON - 1990**

9 27. Ms. London seeks rates ranging from \$600 an hour in 2010 to \$775
10 an hour in 2015. She graduated from law school 25 years ago. In 2010, Melissa
11 Kasnitz, an attorney at DRA identified as a 1992 law graduate, was awarded fees
12 at the rate of \$650 an hour. Exhibit 9, p. 11. This rate is almost 10 percent
13 above the 2010 rate sought by Ms. London. In the same decision, the Court
14 approved fees to Julie Nepveu, an attorney with the AARP Foundation
15 Litigation office, at \$660 an hour for 2010. *Id.* Ms. Nepveu is identified in the
16 order as a 1991 law graduate. *Id.* Ms. London seeks a rate of \$630 an hour for
17 2011, well below the 2010 approved rates for Melissa Kasnitz and Julie Nepveu.

18 It is only slightly above the rate of \$600 an hour approved for ACLU attorney
19 Hector Villagra, a 1994 law graduate, in 2011 in *Vasquez*. Exhibit 18, p. 3. Ms.
20 London’s requested rate is more than 25 percent below the 2011 rate of \$820 an
21 hour for Orrick partner Annette Hurst, who is listed on the firm’s website as a
22 1990 law graduate. Ms. Hurst’s rate was applied in the *Mattel* litigation.
23 Exhibit 20.

24 28. Ms. London seeks a rate of \$680 an hour for 2012. In 2013, Judge
25 Marshall approved the 2012 rate of \$700 an hour for Michelle Uzeta, identified
26 in the decision as a 1992 law graduate. Exhibit 10, pp. 6-7. In 2012, Judge
27 Wright approved fees for Glen Jonas and Christopher Driscoll, 1993 law
28 graduates, at \$650 an hour in a police misconduct case. *See* Exhibit 24, p. 5.

1 While Ms. London's requested rate is \$30 higher than the rate approved by
2 Judge Wright, she has three more years of experience than either Mr. Jonas or
3 Mr. Driscoll according to the information available on their firm website and the
4 State Bar. I reviewed both sources and also downloaded the supporting fee
5 declarations in *Dirks* to form the opinion that Mssrs. Jonas and Driscoll are 1993
6 law graduates.

7 29. The 2013 rate of \$700 an hour, the 2014 rate of \$730 an hour and
8 the 2015 rate of \$750 an hour requested for Ms. London are all below the rates
9 approved for civil rights attorneys with less experience than Ms. London. For
10 example, in *Hernandez v. Goliath, Inc.*, LASC Case No. BC 462953, the Court
11 approved fees at the 2013 rate of \$695 an hour for Emily Rich of Weinberg,
12 Roger & Rosenfeld, just \$5 more than is requested as the 2013 rate for Ms.
13 London. Exhibit 15, p. 5. Based on reviewing her profile on the firm's website,
14 I have formed the opinion that Ms. Rich is a 1993 law graduate.

15 30. Additional evidence of the reasonableness of the rates sought for
16 Ms. London is provided in the order by Judge Otero in *Avila v. Los Angeles*
17 *Police Department*, 11-cv-01326 SJO (C.D. Cal. Aug. 5, 2012), awarding fees at
18 the 2012 hourly rate of \$700 an hour to Matthew McNicholas, a 1997 law
19 graduate. See Exhibit 25, p. 5. The next year, in a declaration filed in *Simplis v.*
20 *Culver City Police Dept.*, cv 10-09497 MWF (C.D. Cal. 2013) [Dkt.# 257-1],
21 Mr. McNicholas attested that his 2013 rate was \$750 an hour. Exhibit 26, ¶ 16.
22 Based on my review of the PACER docket, I understand that the *Simplis* case
23 settled. Ms. London has seven years more experience than Mr. McNicholas. Her
24 requested rates are also reasonable when measured against the rates previously
25 approved for Peter Eliasberg, a 1994 law graduate at the ACLU, was awarded
26 fees in post-appeal proceedings in *Vasquez* in 2014 at the rate of \$730 an hour,
27 the same rate Ms. London seeks for 2014. Exhibit 27; Exhibit 28, p. 7.

28 31. As a point of comparison with commercial rates in similarly

1 complex litigation in the Central District, attached at Exhibit 23 is the 2014 fee
2 declaration filed by Hannah Cannom, then an associate at Milbank Tweed &
3 Hadley and pro bono co-counsel in the *Garcia* case with attorneys from the
4 Disability Rights Legal Center. Ms. Cannom attested to the fact that she was
5 then an eighth-year associate and that her 2014 rate was \$800 an hour. Exhibit
6 23, ¶¶ 2,6. The senior Milbank attorney on the case, a 1997 law graduate, was
7 billed at \$1,135 an hour, more than 50 percent above the rate now sought for Ms.
8 London with nearly a decade more experience. *Id.* at ¶ 7. Other Milbank
9 attorneys for whom fees were sought in the case included a 2002 graduate with
10 12 years' experience billed at \$900 an hour in 2014 and a 2008 graduate billed at
11 the 2014 rate of \$760 an hour. *Id.* at ¶¶ 8,10.

12 **MATT ADAMS 1998 and AHILAN ARULANANTHAM 1999**

13 32. I have discussed Matt Adams and Ahilan Arulanantham in the same
14 section because there is only one year difference in their experience. In
15 addition, there are very few civil rights attorneys in Los Angeles who are 1998
16 law graduates. Matt Adams seeks a market rate of \$710 for 2015, \$680 for 2014,
17 \$650 for 2013, \$620 for 2012, \$580 for 2011 and \$550 for 2010. Ahilan
18 Arulanantham seeks a market rate of \$690 for 2015, \$670 for 2014, \$640 for
19 2013, \$600 for 2012, \$550 for 2011 and \$525 for 2010. Mr. Arulanantham was
20 awarded fees at the rate of \$550 an, hour in 2011 in *Islamic Shura Council of*
21 *Southern Counsel v. Federal Bureau of Investigation*, 2011 U.S. Dist. LEXIS
22 143832, SACV 07-1088 CJC (C.D. Cal. Dec. 14, 2011), *rev'd on other grounds*,
23 725 F.3d 1012 (9th Cir. 2013). I understand that the sanctions upon which the
24 fee award was based were later overturned for reasons unrelated to the nature or
25 amount of the fee award.

26 33. In 2012, Judge Otero approved \$700 an hour for Matthew
27 McNicholas, a 1997 law graduate, in *Avila v. Los Angeles Police Department*,
28 11-cv-01326 SJO (C.D. Cal. Aug. 2, 2012), an employment/First Amendment

1 retaliation case against the Los Angeles Police Department. Exhibit 25, p. 4. I
2 am familiar with the McNicholas law firm. In the past, Patrick McNicholas and
3 I had similar cases on behalf of female officers with the Los Angeles Police
4 Department subjected to sex discrimination. McNicholas and McNicholas is a
5 small civil rights firm, primarily engaged in employment and civil rights
6 litigation. Based on reviewing the docket and speaking to Mr. Galipo's
7 associate, it is my understanding that the fees and damages were resolved by a
8 settlement. This rate of \$700 an hour is considerably above the 2012 rates of
9 \$620 and \$600 an hour requested for Mssrs. Adams and Arulanantham,
10 respectively. In *Communities Actively Living*, the Court approved the 2012 rate
11 of \$665 an hour for Shawna Parks, identified in the order as a 1999 law
12 graduate. Exhibit 10, pp. 6,7.

13 34. In *Simplis v. Culver City Police Department*, 10-cv-09497 MWF, a
14 wrongful death case. I filed a fee declaration for attorney Dale Galipo, who
15 represented a co-plaintiff in *Simplis*. *Simplis* The *Simplis* attorneys sought \$750
16 an hour for Matthew McNicholas, a 1997 graduate and the same attorney who
17 was awarded fees in 2012 in *Avila*. Mr. McNicholas' declaration in *Simplis* is
18 attached at Exhibit 26. In *Avila*, Judge Otero rejected the defense assertion that
19 McNicholas should only receive \$650 an hour and approved the 2012 rate of
20 \$700 an hour based on the Court's conclusion that rates increase as attorneys
21 gain more skills. See Exhibit 25, pp. 3-4. Mr. Adams is practicing two years
22 longer than Mr. McNicholas was when he was awarded fees in *Avila*. His
23 requested 2015 rate is only \$10 above the rate approved for Mr. McNicholas in
24 2012. Mr. Arulanantham has now been practicing for 15 years, the same length
25 of time that Matthew McNicholas was when he was awarded fees in 2012 at
26 \$700 an hour in *Avila*. Mr. Arulanantham's requested 2015 rate is \$10 below the
27 rate approved for Matthew McNicholas in 2012 in *Avila*.

28 35. In his declaration filed in the *Garcia* case, Laurence Paradis attested

1 that the 2013 rate for a 1998 law graduate at DRA was \$655 an hour. *See*
2 Exhibit 11, Ex. A. For 2012, the rate for the same attorney was \$645 an hour.
3 Exhibit 11, Ex. B. Mr. Paradis also attested that the 2013 rate for Shawna Parks,
4 a 1999 law graduate like Mr. Arulanantham, was \$675 an hour. Exhibit 11, Ex.
5 A. The requested 2012 rates of \$600 and \$620, as well as the 2013 rates of \$640
6 and \$650 for Mr. Arulanantham and Mr. Adams, respectively, are below the
7 comparable year rates for attorneys practicing the same length of time at DRA.
8 Exhibit 11. In 2014, the Court awarded fees at the rate of \$640 an hour to Mr.
9 Arulanantham's colleague at the ACLU, Peter Bibring, a 2002 law graduate with
10 12 years of experience in 2014. *See* Exhibit 27; Exhibit, 28 at ¶ 16. With three
11 additional years of experience, Mr. Arulanantham requests a 2014 rate only \$30
12 an hour higher than the rate approved for Peter Bibring. This rate is also only
13 \$10 above the \$600 an hour approved by Judge Marshall for Kevin LaHue, a
14 2004 law graduate, in *Rodriguez*. Exhibit 16, p. 14.

15 36. As a point of comparison to comparable attorneys in large firms, I
16 have submitted a declaration filed in the Eastern Division in *Jones v. Upland*
17 *Housing Authority*, EDCV 12-2074 VAP (C.D. Cal. Feb. 24, 2014), by Amy
18 Lally, a partner at Sidley Austin in Los Angeles serving as co-counsel with
19 public interest lawyers. Exhibit 22. Ms. Lally attested that she is a 1998 law
20 graduate and that her 2012 customary billing rate was \$700 an hour and her
21 2014 rate was \$825 an hour, an increase of almost 20 percent in just two years.
22 Ms. Lally's 2014 rate is more than 20 percent higher than Mr. Adams' requested
23 rate of \$680 and Mr. Arulanantham's rate of \$670.

24 2015 RATES FOR SULLIVAN & CROMWELL ASSOCIATES

25 37. Sullivan & Cromwell is seeking compensation for 2007, 2008 and
26 2009 law graduates at the 2015 rate of \$865 an hour. These rates are supported
27 by the declaration of Michael Steinberg and the various orders and awards
28 identified in, and submitted with, his declaration. In addition to the evidence

1 submitted by Mr. Steinberg, additional support for these market rates is found in
2 the rates for Milbank Tweed. Milbank attorney Hannah Cannom attested that
3 her billing rate for 2014 was \$800 an hour with eight years of experience.
4 Exhibit 23, ¶¶ 2,6. This rate is comparable to the \$865 requested for the Sullivan
5 2007 associates. It represents approximately a 7.5 percent increase for an
6 additional year of experience and an increase in base rates.

7 38. Similarly, the rates for sixth-year associates are comparable.
8 Milbank Tweed's 2014 billing rate for an associate with six years of experience
9 was \$760 an hour. Sullivan now requests \$800 an hour, which is little more than
10 a five percent increase from 2014. The rate requested for the 2010 law graduate
11 is also reasonable when compared to the Milbank 2014 rates. Last year,
12 Milbank billed an associate with six years of experience at \$760 an hour. With
13 one year less experience, but allowing for a rise in base rates for all associates,
14 the Sullivan rate is \$10 below the 2014 Milbank rate for an associate with one
15 year less experience. Sullivan also seeks fees at a 2015 market rate of \$370 an
16 hour for a 2014 law graduate. In 2009, Gibson Dunn billed an attorney with the
17 same experience at \$345 an hour. Exhibit 17, p. 15. The \$25 differential in these
18 rates over six years is little more than a \$4 a year increase. As demonstrated by
19 the various fee awards submitted with my declaration, this is far below the actual
20 increases in rates over the past six years.

21 **2015 RATE FOR 2001 GRADUATE**

22 39. The requested 2015 rate for Victoria Lopez, a 2001 law graduate, of
23 \$640 an hour is also consistent with the rates approved for civil rights attorneys.
24 For example, in 2014, Peter Bibring, a 2002 law graduate and a staff attorney at
25 the ACLU of Southern California, was awarded fees at \$640 an hour by the Hon.
26 Valerie Baker Fairbank in *Vasquez*. Exhibits 27 and 28. With two additional
27 years of experience, Ms. Lopez seeks the same rate for 2015 that was approved
28 for Mr. Bibring last year. Ms. Lopez's requested rate is comparable to the 2013

1 rate of \$585 an hour approved for Laboni Hoq. See Exhibit 15, p. 5. Both are
2 2001 law graduates; however, Ms. Lopez has two additional years of experience
3 at this point. The \$55 difference in their rates represents an increase of
4 approximately 4.55 annually, including both an adjustment of base rates and step
5 increases.

6 **2015 RATE FOR 2007 GRADUATES**

7 40. Three attorneys graduated in 2007. They seek fees at the 2015 rate
8 of \$535 an hour. They are now practicing eight years. In *Rodriguez*, Judge
9 Marshall approved the 2014 rate of \$600 an hour for Kevin LaHue, identified as
10 a 2006 law graduate. Exhibit 16, p. 14. In *Communities Actively Living*, Judge
11 Marshall approved the 2012 rate of \$555 an hour for Mary-Lee Smith, a
12 seventh-year attorney. Exhibit 10, p. 6. In the same decision, the Court
13 approved \$525 an hour as the 2012 rate for Matthew Strugar, then an eighth-year
14 attorney. I am very familiar with Sean Riordan, who was an attorney with the
15 ACLU of San Diego and Inland Counties until recently. I am also very familiar
16 with Matthew Strugar, as previously stated, as he was my law clerk and is now
17 my co-counsel. Their skills are comparable as attorneys practicing eight years.
18 The \$10 difference in their rates is insignificant in view of the three year time
19 difference since the rates approved for *Communities Actively Living*.

20 **2015 RATE FOR 2008 GRADUATE**

21 41. The 2008 graduate, Marisol Orihuela, is now practicing seven
22 years. She seeks a rate of \$510 an hour. In 2012, Judge Marshall approved the
23 rate of \$555 an hour for Mary-Lee Smith of Disability Rights Advocates, then
24 practicing the same length of time. Exhibit 10, p. 6. That same year, Judge
25 Carter approved the rate of \$460 an hour for David Sarnoff, then an associate at
26 Schonbrun DeSimone. Exhibit 14, p. 8. Ms. Orihuela's proposed rate is at the
27 mid-point of what district court's awarded to civil rights lawyers with seven
28 years experience three years ago.

1 **2015 RATE FOR 2009 GRADUATES**

2 42. The 2009 graduates are now practicing six years. They seek a 2015
3 rate of \$490 an hour. In *Communities Actively Living*, the Court approved the
4 2012 rates of \$430-450 an hour for attorneys then practicing five years. Exhibit
5 10, pp. 6-7. In *Rodriguez*, Judge Marshall approved the 2014 rate of \$500 an
6 hour for Caitlin Weisberg, identified as a 2008 law graduate. Exhibit 16, p. 14.
7 Laurence Paradis attested that the rate for a sixth-year attorney at DRA in 2013
8 was \$455. Exhibit 11. The increase of \$35 over two years represents an annual
9 increase of approximately 3.5 percent.

10 **2015 RATE FOR 2010 GRADUATES**

11 43. The 2010 graduates are now practicing five years. They seek a 2015
12 rate of \$475 an hour. As noted in the preceding section, in *Communities*
13 *Actively Living*, Judge Marshall approved rates of \$430 to \$450 an hour for civil
14 rights attorneys practicing five years at the time. Exhibit 10, pp. 6,7. The
15 increase of the base rate over three years is a modest 1.5 to 3.3 percent annual
16 increase. In 2010, DRA attorney Mary Lee Kimber was awarded fees at the
17 same rate of \$475 an hour when she was practicing five years. Exhibit 9, p. 11.

18 **2015 RATE FOR 2011 GRADUATES**

19 44. The 2011 graduates are now practicing four years. They seek a
20 2015 market rate of \$450 an hour. In *Charlebois*, Judge Carter awarded fees to
21 Schonbrun DeSimone associate Amanda Canning, a 2006 graduate, at the 2010
22 rate of \$450 an hour. Exhibit 14, p. 10. The rate of \$450 an hour is the same as
23 the 2012 rate approved for a fifth-year attorney in *Communities Actively Living*.
24 Exhibit 10, pp. 6,7. This rate is the same rate approved by Judge Otero in *Avila*
25 for Alyssa Shabloski, a 2008 law graduate with the McNicholas law firm in
26 *Avila*. Exhibit 25, p. 4. At the time of this award in 2012, Ms. Shabloski had
27 only four years of experience.

28 **2015 RATE FOR 2014 GRADUATE**

1 45. Plaintiffs are seeking fees at \$340 an hour for the 2014 graduate.
2 The 2013 rate for a second-year attorney at DRA was \$295 an hour. Exhibit 11,
3 Ex. A. The Court approved the 2012 rate of \$330 an hour for Kara Janssen,
4 identified as a 2010 graduate. Exhibit 10, p. 7. Also in 2012, the Court
5 approved the rate of \$325 an hour for Menaka Fernando, listed as a 2010
6 graduate. Exhibit 14, p. 8.

7 **PARALEGALS AND LAW STUDENTS:**

8 46. Plaintiffs also seek compensation for paralegals with varying
9 degrees of experience. As the exhibits attached to my declaration demonstrate,
10 it is the practice in Los Angeles to bill the time of paralegals. The rates recently
11 approved for paralegals in civil rights cases range from \$150 an hour for a
12 certificated, but relatively new paralegal, to \$260 an hour for a highly
13 experienced paralegal. In *Hickman*, the Court approved the 2011 paralegal
14 billing rate of \$200 an hour at the firm of Traber & Voorhees. Exhibit 13, ¶ 12.
15 In 2011 in *Vasquez*, Judge Baker approved compensation for paralegals at the
16 ACLU at rates ranging from \$165 an hour to \$200 an hour. Exhibit 18, p. 3. In
17 *Charlebois*, Judge Carter approved compensation for paralegals at Schonbrun
18 DeSimone at a 2012 rate of \$150 an hour. Exhibit 14, p. 8. The 2012 rates
19 approved for paralegals in *Communities Actively Living* ranged from \$230 to
20 \$240 an hour. Exhibit 10, p. 7. In *Hernandez*, the Court approved fees to
21 Traber & Voorhees at \$200 to \$250 an hour for time incurred by paralegals.
22 Exhibit 15, p. 5. In 2014 in *Rodriguez*, the Court approved paralegal rates of
23 \$175 to \$295 an hour at the Kaye, McLane, Bednarski & Litt firm. Exhibit 16,
24 p. 14.¹

25 47. In *Charlebois*, the Court approved \$200 an hour for law students at
26

27 ¹ Michael Steinberg's Declaration and Exhibits provide support for the rates
28 of Sullivan & Cromwell LLP support staff.

1 Schonbrun DeSimone. Exhibit 14, p. 8. In *Jones v. City of Los Angeles*, Judge
2 Real approved fees for law clerks at \$200 an hour for 2008. Exhibit 4, p. 4. The
3 rate approved for DRA summer law clerks in *Communities Actively Living* was
4 \$250 an hour. Exhibit 10, p.7. In *Hernandez*, the Court approved fees for law
5 clerks at Traber & Voorhees at \$225 an hour for 2013. Exhibit 15, p. 5, ¶ 9.

6 48. Based on all of the decisions and declarations identified above, I am
7 of the opinion that the rates sought by this motion are well within the range of
8 reasonable market rates for attorneys of comparable skill, experience and
9 reputation engaged in similarly complex litigation in the Central District.

10
11 I declare under penalty of perjury that the foregoing is true and correct.
12 Executed this 31st day of July, 2015, at Los Angeles, California.

13
14 
15 CAROL A. SOBEL
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County of Los Angeles

JUN 07 2016

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By Samantha Cuevas, Deputy
Samantha Cuevas

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES, UNLIMITED JURISDICTION

11 ULDIS LUSTE, an individual,)
12)
13 Plaintiff,)
14 vs.)
15 DR. JEFFREY TARANTO EYECARE, A)
16 PROFESSIONAL OPTOMETRIC)
17 CORPORATION a California corporation)
18 d/b/a IDOL-EYES OPTOMETRY;)
19 JEFFREY TARANTO, an individual; and)
20 DOES 1 thru 80, inclusive,)
21 Defendants.)

CASE NO. BC593577
~~PROPOSED~~ ORDER GRANTING IN
PART PLAINTIFF ULDIS LUSTE'S
MOTION FOR ATTORNEYS' FEES
Filed: September 3, 2015
Dept.: 53
Judge: Hon. Joseph Kalin
RES. ID. : 160409119414
HRG. DATE: June 2, 2016
HRG. TIME: 8:30 a.m.

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE THAT, on June 2, 2016, at 8:30 a.m., or as soon thereafter as
24 this matter was heard, in Department 53 of the Los Angeles Superior Court, 111 N. Hill Street,
25 Los Angeles, CA 90012, the Hon. Joseph Kalin presiding, Plaintiff Uldis Luste's Motion for
26 Attorneys' Fees in the amount of \$43,292.00 was heard.

27 Rob Hennig, Esq., of Hennig Ruiz P.C. appeared on behalf of Plaintiff Uldis Luste.
28 Craig Steinberg, Esq. of the Law Offices of Craig Steinberg, appeared on behalf of Defendant Dr.

HENNIG
RUIZ P.C.

~~PROPOSED~~ ORDER GRANTING IN PART PLAINTIFF ULDIS LUSTE'S
MOTION FOR ATTORNEYS' FEES

1 Jeffrey Tarranto Eyecare, A Professional Optometric Corporation d/b/a Idol-Eyes Optometry. The
2 Court entertained extensive argument by counsel.

3 Upon consideration of all moving papers and the argument of counsel:

4
5 IT IS HEREBY ORDERED THAT:

- 6
- 7 1. The amount of \$21,646.00 shall be awarded to Rob Hennig of Hennig Ruiz P.C.
- 8 This amount is calculated based on the lodestar of \$21,646.00 (27.4 hours
- 9 reasonably incurred by Rob Hennig at a reasonable hourly rate of \$790 per hour)
- 10 without a multiplier;
- 11 2. The Court affirms the previously awarded costs on February 26, 2016 of \$543.00;
- 12 and
- 13 3. Following the award of attorneys fees, the judgment totals judgment \$49,854.00
- 14 and shall continue to accrue at the annual rate of ten percent (10%) per annum
- 15 from June 2, 2016 until fully satisfied. Defendant Dr. Jeffrey Tarranto Eyecare, A
- 16 Professional Optometric Corporation d/b/a Idol-Eyes Optometry is to receive credit
- 17 for any amount already paid on the judgment.

18
19 DATED: 10/17/16

20 **FOR PUBLIC RELEASE**

21 HON. JOSEPH KALIN
22 JUDGE OF THE SUPERIOR COURT

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28 HENNIG
RUIZ P.C.

PROOF OF SERVICE

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Case Name: *Luste v. Idol-Eyes Optometry, et al.*
Court and Case No.: Los Angeles Superior Court Case Number BC593577

I am employed in the city of Los Angeles, county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1925 Century Park East, Suite 1960, Los Angeles, California 90067.

On JUNE 2, 2016, I served the document(s) described as:

[PROPOSED] ORDER GRANTING IN PART PLAINTFF ULDIS LUSTE'S MOTION FOR ATTORNEYS' FEES

on the party or parties addressed as follows:

Craig S. Steinberg, O.D., P.C.
Law Offices of Craig S. Steinberg
5737 Kanan Road, Suite 540
Agoura Hills, CA 91301

Attorneys for Defendants Dr. Jeffrey Taranto
Eyecare, A Professional Optometric
Corporation and Jeffrey Taranto, O.D.

(BY MAIL) I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY OVERNIGHT DELIVERY SERVICE) I caused said envelope(s) to be delivered over-night via overnight delivery service in lieu of delivery by mail to the addressee. I am readily familiar with my firm's business practice of delivering documents by the use of an overnight delivery service with the expectation that documents given to the service are reasonably calculated to be delivered the next day to their addressee.

(BY PERSONAL SERVICE) I delivered or caused to be delivered said envelope by hand to the offices of the addressee(s). I am readily familiar with my firm's business practice of personally serving documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on JUNE 2, 2016, at Los Angeles, California.

FOR PUBLIC RELEASE

ROB HENNIG

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12 *Attorneys for Student/Defendant Michael Garcia*

13 UNITED STATES COURT OF APPEALS
14 FOR THE NINTH CIRCUIT

15 LOS ANGELES UNIFIED SCHOOL
16 DISTRICT,

17 Plaintiff,

18 vs.

19 MICHAEL GARCIA,

20 Student/Defendant.
21
22
23
24

Case No. 10-55879

Appeal from: Case No.: CV 09-9289-VBF-(CTx)

Related Case No: CV 09-8943-VBF-(CTx)

DECLARATION OF HANNAH CANNOM IN SUPPORT OF DEFENDANT MICHAEL GARCIA'S MOTION FOR REASONABLE ATTORNEY'S FEES AND COSTS

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DECLARATION OF HANNAH CANNOM

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DECLARATION OF HANNAH CANNOM

I, HANNAH CANNOM, declare that if called as a witness I would testify competently from first-hand knowledge as follows:

1. I am a member of the Bar of the State of California. I am an associate at Milbank, Tweed, Hadley & McCloy in the Litigation & Arbitration group. I am one of the attorneys primarily responsible for Milbank’s representation of Defendant Michael Garcia (“Defendant”) in this action. I have personal knowledge of the facts contained herein and if called to testify, could and would competently testify thereto.

2. I earned my J.D. from the University of California at Los Angeles School of Law in 2006 and my B.A. from the University of Pennsylvania in 2000. I was the primary Milbank attorney on this case during the Due Process Hearing before the Office of Administrative Hearings where I worked closely with the DRLC in preparing Mr. Garcia’s due process case. Prior to law school, I taught special education high school through the Teach for America program in San Jose, California.

3. Five Milbank attorneys other than myself have been primarily involved in this case at its various stages: Daniel Perry, a partner at the firm; Delilah Vinzon, special counsel at the firm; Kate Eklund, a former associate at the firm; Revi-ruth Enriquez, an associate at the firm; and Caitlin Hawks, a former associate at the firm.

4. Support staff, including paralegal Ricky Windom, substantially contributed work to this matter.

5. At least six other attorneys and support staff persons at Milbank worked on this matter, but in an exercise of billing discretion their fees are not being claimed. Their fees total more than \$45,000.00.

6. Milbank’s current rate for an associate with my level of experience is \$800/hour.

1 7. Daniel Perry graduated *Phi Beta Kappa* from the University of
2 Wisconsin with a B.A. in 1996 and graduated *cum laude* with a J.D. from Cornell
3 University in 1999. He has practice law for almost fifteen years and is a member
4 in good standing with both the California and New York State Bar Associations.
5 The current Milbank rate for a partner with his level of experience is \$1,135/hour.

6 8. Delilah Vinzon graduated *cum laude* with a J.D. from the University
7 of California Hastings College of Law and a B.A. from the University of California
8 at Los Angeles. Ms. Vinzon is special counsel in the firm's Litigation &
9 Arbitration Group. She has practiced law for over eleven years. Ms. Vinzon won
10 several Moot Court awards in law school. The current rate for Milbank special
11 counsel with her experience is \$900/hour. Ms. Vinzon was responsible for
12 managing this case from the filing of the Due Process Request through its
13 successful completion. Ms. Vinzon also argued the case before the California
14 Supreme Court.

15 9. Kate Eklund received her J.D. from the University of Michigan Law
16 School in 2009 and received her B.A. from the University of Michigan in 2004.
17 Ms. Eklund is a former associate at Milbank. The current Milbank rate in this case
18 for an associate of her year is \$550/hour. Ms. Eklund performed much of the legal
19 research and background information that was needed in the drafting of appellate
20 briefs in this case. Ms. Eklund now works in the Career Services Department of
21 the University of California at Los Angeles School of Law.

22 10. Revi-ruth Enriquez received her J.D. from Georgetown University in
23 2008 and her B.A. from Loyola Marymount University in 2002. Ms. Enriquez is a
24 sixth year associate at Milbank. The current Milbank rate for an associate of her
25 year is \$760/hour. Ms. Enriquez was the primary Milbank attorney on this case
26 during the appellate process and worked diligently preparing the briefs that were
27 filed before the United States Court of Appeals for the Ninth Circuit and the
28 California Supreme Court.

1 11. Caitlin Hawks received her J.D. from the University of California at
2 Los Angeles School of Law in 2008 and received her B.A. from Puget Sound in
3 2004. Ms. Hawks is a former Milbank associate. The current Milbank rate for an
4 associate of her year is \$760/hour. Ms. Hawks helped support the team during Mr.
5 Garcia's Due Process Hearing before the OAH and performed substantial work on
6 the appeal. Ms. Hawks now works at the Savitt Bruce & Wiley law firm in Seattle,
7 Washington.

8 12. Ricky Window has been a paralegal for over 8 years. Mr. Window
9 received his J.D. from The Ohio State University in 2002 and his B.A. from Clark
10 Atlanta University in 1998. The current Milbank rate for a paralegal with his
11 experience is \$230/hour.

12 13. It is the practice of all Milbank attorneys and support staff whose time
13 is billed to the client to record the time expended and expenses incurred with
14 respect to each litigation matter on which the firm is engaged. The firm
15 maintained such time records and records of expenses for this matter.

16 14. Attached hereto as Exhibit A is a true and correct copy of a report of
17 Milbank's time records and records of expenses for this matter up to
18 February 5, 2014. The records have been redacted in some places to protect
19 attorney-client privileged information or attorney work product. Additionally, the
20 records have been altered from the original report generated to deduct certain time
21 entries that Milbank, in exercise of its billing judgment, has elected not to claim.
22 None of these redactions or alterations have increased the total of any fees or
23 expenses claimed. I have personally reviewed all the entries and calculations on
24 this report. Any calculation errors in the totals of hours, fees, or expenses are
25 inadvertent and mine alone. As of February 5, 2014, the total fees and expenses
26 incurred by Milbank, after adjustments for billing judgment, are \$541,840.

27 15. Since the attached time report was prepared on February 5, 2014,
28 significant additional time has been spent preparing this motion and its supporting

1 declarations. Once those time records are available, Milbank intends to submit
 2 them for compensation as well.

3 16. Below is a table of the Milbank time-keepers on this matter as broken
 4 down by proceeding:

Attorney	Hours			Total Fees Sought		
	Due Process	District Court	9th Circuit	Due Process	District Court	9th Circuit
Daniel Perry	8.4	0.7	14.5	\$6,200	\$578	\$14,025
Hannah Cannom	124.75	7	125.9	\$68,613	\$3,595	\$85,689
Kate Eklund	0	0	63	\$0	\$0	\$34,100
Revi-ruth Enriquez	139.4	5.6	110.9	\$60,456	\$2,940	\$66,271
Caitlin Hawks	88.4	13.9	19.2	\$37,048	\$7,298	\$11,970
Delilah Vinzon	50.7	26.9	91.7	\$32,955	\$19,045	\$70,238
Ricky Windom	84	13.5	15.8	\$15,540	\$2,498	\$3,131
Total	495.65	67.6	441	\$220,812	\$35,605	\$285,423

19
 20 **Evidence that Milbank's Rates are Reasonable**

21 17. On January 23, 2014, the *National Law Journal*, a legal industry trade
 22 publication, published the results of its annual survey of the billing rates of the 350
 23 largest law firms in the United States. A true and correct copy of this article is
 24 attached as Exhibit B. Milbank is one of the 350 largest law firms in the United
 25 States. For firms that have their largest office in New York, like Milbank, the
 26 highest average partner billing rate was \$882/hour and for associates it was
 27 \$520/hour.
 28

1 18. The hourly rates charged in connection with the professional services
2 rendered on behalf of Michael Garcia in this litigation are reasonable. The rates
3 are comparable to the hourly rates of Milbank's peer firms, most of which are also
4 New York-headquartered firms at the top end of the market. Thomson Reuters'
5 Peer Monitor Public Rates program compiles attorney and support staff hourly
6 rates as publicly reported in court filings throughout the country. The high hourly
7 rate for partners based in New York and California offices of Am Law 100 firms
8 was \$1195/hour in 2012, for associates it was \$990/hour, and for legal assistants
9 and paralegals it was \$665/hour. The data from this program confirms that the
10 hourly rates charged by Milbank in this litigation are in line with those charged by
11 other top-tier "Am Law 100" firms.

12 19. Attached hereto as Exhibit C is a true and correct copy of an
13 application filed by Milbank before the United States Bankruptcy Court, District of
14 Nevada in *In re Circus and Eldorado Joint Venture, et al.*, Case No. BK-12-51156.
15 This application is entitled Debtors' Application for an Order, Pursuant to 11
16 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014(a), and 2016(b), and Local
17 Rule 2014, Authorizing Employment and Retention of Milbank, Tweed, Hadley &
18 McCloy LLP As Counsel for the Debtors.

19 20. Attached hereto as Exhibit D is a true and correct copy of an order of
20 the United States Bankruptcy Court, District of Nevada in *In re Circus and*
21 *Eldorado Joint Venture, et al.*, Case No. BK-12-51156. The order is entitled Order
22 Pursuant to Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014(a),
23 and 2016(b), and Local Rule 2014, Authorizing Employment and Retention of
24 Milbank, Tweed, Hadley & McCloy LLP As Counsel for the Debtors.

25 21. Courts routinely approve Milbank's hourly rates in fee applications.
26 (*E.g.*, Ex. C at 8; Ex. D at 3, ¶ 3).

27 22. On March 31, 2010, in *LV v. New York City Department of*
28 *Education*, Case No. 03 Civ. 9917, a district court awarded over \$1.2 million in

1 attorneys' fees to Milbank and Advocates for Children of New York for a case
 2 brought under 20 U.S.C. § 1400—the Individuals with Disabilities in Education
 3 Act. The court awarded \$847,184.38 for work performed by Milbank attorneys on
 4 a pro bono basis and the remainder for work performed by Milbank's co-counsel.
 5 The court found that \$600/hour was a reasonable rate for a Milbank partner,
 6 \$225/hour to \$375/hour was a reasonable rate for a Milbank associate depending
 7 on the associate's experience and contributions to the case, and that \$150/hour was
 8 a reasonable rate for a Milbank paralegal. A true and correct copy of this
 9 memorandum and order is attached as Exhibit E.

10 23. In *Instrumentation Laboratory Co. v. Walter Binder*, a patent
 11 litigation case, the court awarded plaintiffs approximately \$3.6 million in
 12 attorneys' fees for work completed by attorneys in the Los Angeles and London
 13 offices of Milbank. The court found that \$842 and \$725 were reasonable rates for
 14 the two primary Milbank partners involved in the case. The court additionally
 15 found that \$475 was a reasonable rate to cover all the Milbank associates who
 16 worked on the case. The associates ranged from a third year to a ninth year. A
 17 true and correct copy of the order is attached as Exhibit F.

18
 19 I declare under penalty under the laws of the United States of America that
 20 the foregoing is true and correct.

21 Executed this ^{25th} day of February, 2014 at Los Angeles, California.

22
 23 **FOR PUBLIC RELEASE**
 24 

25 HANNAH CANNOM

26
 27
 28

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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
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4 SIDLEY AUSTIN LLP
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DECL. OF AMY LALLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES
Case No. EDCV 12-2074

DECLARATION OF AMY LALLY

1 I, Amy Lally, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am a partner at the law firm of Sidley Austin LLP, co-counsel for
3 Plaintiffs Rebecca Jones and Brent Palmer in this action. I have personal knowledge
4 of the facts set forth herein, and, if called as a witness, I could and would testify
5 competently hereto.
6

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.

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10 *Attorneys for Plaintiffs-Petitioners*
(Additional Counsel for Plaintiffs on Following Page)
11

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 JOSE ANTONIO FRANCO-
16 GONZALEZ, et al.,

17 *Plaintiffs & Petitioners,*

18 v.

19 ERIC H. HOLDER, Jr., Attorney
20 General, et al.,

21 *Defendants & Respondents.*
22

Case No. 10-CV-02211 DMG (DTBx)

**DECLARATION OF MICHAEL H.
STEINBERG IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES**

The Honorable Dolly M. Gee

Hearing Date: October 30, 2015

Hearing Time: 10:00 a.m.

Court Room: 7

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25 Facsimile: (602) 650-1376
26 *Attorneys for Plaintiffs-Petitioner*
27
28

STEINBERG DECLARATION

1 **DECLARATION OF MICHAEL H. STEINBERG**

2 I, Michael H. Steinberg, declare as follows.

3 1. I am a member of the Bar of the State of California, admitted to
4 practice before this Court, and a partner of Sullivan & Cromwell LLP. I am co-
5 lead counsel for Plaintiffs in this action. I submit this declaration in support of
6 Plaintiffs’ Motion for Attorneys’ Fees (“Motion”). I have personal knowledge of
7 the facts set forth herein, and, if called to testify, could and would testify
8 competently thereto.

9 2. I am enormously proud of the work that we have accomplished
10 in these five-plus years of litigation. At the commencement of my involvement, I
11 did not believe that the Government would spend the resources it did trying to
12 defeat the fundamental aim of this litigation — providing legal assistance to
13 detainees with serious mental illnesses stuck in immigration proceedings who were
14 being forced to represent themselves. Nevertheless, my co-counsel and my firm
15 lived up to our obligation to zealously prosecute the interests of what became the
16 *Franco* Classes.

17 3. Through this Motion, Plaintiffs are seeking an award of fees
18 and costs, including those of Sullivan & Cromwell LLP, for the successful results
19 achieved in this contentious, but ultimately successful, *pro bono* litigation. While
20 Plaintiffs seek fees for the work that Sullivan & Cromwell LLP has performed, we
21 have committed to donate to our co-counsel all of the fees that we obtain in this
22 action. Sullivan & Cromwell LLP intends to keep only reimbursement of certain
23 (discounted) out of pocket costs.¹ From the beginning, it has been Sullivan &
24 Cromwell LLP’s intention to donate all fees to the public interest organizations
25 serving as our co-counsel in this case, to ensure that these organizations are well-
26

27 ¹ These fees and costs are based on the inception of the case to June 30, 2015,
28 and Sullivan & Cromwell LLP reserves the right to supplement these numbers.

1 funded so they may continue their important work protecting the rights of
2 vulnerable populations.

3 **I. SULLIVAN & CROMWELL LLP QUALIFICATIONS**

4 4. I am serving as Co-Lead Counsel in part because of my
5 extensive experience and expertise in trial work, class action lawsuits and other
6 complex litigation.² I, along with attorneys working under my supervision at
7 Sullivan & Cromwell LLP, first appeared on behalf of Plaintiffs in July of 2010.
8 (Dkt. 17.) However, since April 2010, Sullivan & Cromwell LLP has been an
9 extremely active member of the team planning for (and then litigating) this case on
10 behalf of Plaintiffs, including taking a leading role in formulating all case strategy
11 during the five-plus years of litigation in *Franco*. Although Sullivan & Cromwell
12 LLP was not initially slated to be Co-Lead Counsel on behalf of the *Franco* class,
13 our co-counsel honored Sullivan & Cromwell LLP by elevating us to that status in
14 September of 2011. (See Dkt. 307.)

15 **A. My Professional Background**

16 5. I graduated from the University of California at Berkeley with
17 highest honors in 1983. I then graduated from Stanford Law School in 1986,
18 where I was also awarded honors and was a member of, and then articles editor for,
19 the Stanford Law Review. After law school, I clerked for the Honorable Thomas
20 P. Griesa of the United States District Court, Southern District of New York, from
21 1986-87. I was a summer associate at Sullivan & Cromwell in New York in 1986,
22 and have been with Sullivan & Cromwell LLP, resident in its Los Angeles office,
23 since 1990. I was elected to partner in 1994. I am admitted to practice before nine
24 United States Courts of Appeals as well as the Supreme Court of the United States.

25

26

27 ² My parents raised me to never 'brag' about what I have accomplished, so please
28 forgive the awkwardness of pages about what I have had the good fortune of doing
in my professional career.

1 6. My practice over the years has primarily focused on complex
2 commercial litigation, including discovery-intensive, complex class actions, and
3 trial work. A list of my published cases is attached as Exhibit A. I have been
4 litigating class actions since 1988. I personally have defended dozens of class
5 actions throughout my career. Highlights of my class action experience include:

- 6 • *In re Volcano Corp. S'holder Litig.*, No. 10485-VCP (Del. Ch.
7 2014-15) (lead counsel for Philips in four class action lawsuits
8 challenging the approximately \$1 billion tender offer for
9 Volcano Corporation made by Philips);
- 10 • *In re Polyurethane Foam Antitrust Litig.*, MDL 2196, No. 10-
11 MD-2196 (JZ) (N.D. Ohio 2014-15) (retained as lead counsel to
12 FXI Holdings, Inc. 11 weeks before trial of multiple direct
13 purchaser class cases seeking \$3 billion in damages and
14 successfully obtained partial summary judgment and a
15 favorable settlement and litigated the indirect purchase class
16 cases as well);
- 17 • *In re American Realty Capital Properties, Inc. Litig.*, 15-mc-
18 00040 (AKH) (S.D.N.Y. 2015) (lead counsel for the Cole Real
19 Estate Defendants for this consolidated litigation challenging a
20 \$4 billion loss of value caused by ARCP's restatement);
- 21 • *Coe v. Philips Oral Healthcare, Inc. et al.*, No. C13-518 (MJP)
22 (W.D. Wa. 2013-14) (as lead counsel for Philips, successfully
23 obtained order denying class certification and entry of judgment
24 in favor of Philips on individual claims potentially valued at
25 \$463 million);
- 26 • *Perkins v. Philips Oral Healthcare*, No. 12-cv-01414 (S.D. Cal.
27 2012-14) (as lead counsel, representing Philips in connection
28

- 1 with class action products liability suit challenging Philips'
2 advertising of the Airfloss Product);
- 3 • *In re Philips/Magnavox Television Litig.*, No. 09-3072 (PGS)
4 (D.N.J. 2009-12) (as lead counsel, representing successfully
5 Philips in connection with a purported consumer class action
6 asserting a defect in more than \$1.7 billion of flat-screen
7 television sets, which was settled on terms favorable to Philips);
 - 8 • *In re Bisphenol A (BPA) Polycarbonate*, MDL 1967, No. 08-
9 1967-MD-W-ODS (W.D. Mo. 2008-11)(including 20 separate
10 class actions) (as lead counsel for Avent, successfully limited
11 and then resolved \$1 billion consumer class-action fraud claim;
12 served as Liason Counsel at the request of co-Defendants);
 - 13 • *Ganjei v. Ralphs et al.*, No. BC367732 (Cal. Super. Ct. 2007-
14 08) (as lead counsel for Avent, defeated class action
15 challenging whether Philips included phthalates in its baby and
16 toddler products);
 - 17 • *Guttman v. McGinnis*, No. 3450-VCL (Del. Ch. 2008)
18 (defeated class action challenging Royal Philips, N.V.'s \$5
19 billion acquisition of Respironics);
 - 20 • *Union Bank of Switz. et al. v. Argenal*, No. 97-56325 (9th Cir.
21 1997) (defended class action claim that UBS laundered \$500
22 million in funds supposedly obtained from the former president
23 of the Philippines);
 - 24 • *Stomovics v. Gallogly*, No. C-94-2262-CAL (N.D. Cal. 1995-
25 96) (securities fraud class action in connection with offering of
26 Resound Corporation);
 - 27 • *Young's Market Going Private Litigation*, (Cal. Super. Ct.)
28 (1990-1) (represented Goldman Sachs & Co. in class action

- 1 litigation concerning the going private transaction involving
2 Young's Market);
- 3 • *Karatz v. Fine, et al.*, No. 92-CV-2172-WJR (C.D. Cal. 1992-
4 94) (class action and consolidated trustee's action for fraud and
5 breach of fiduciary duty, where as Defendants, defeated motion
6 for class certification);
 - 7 • *Cal. State Electrics Assoc. v. Matsushita*, No. BC048196 (Cal.
8 Super. Ct. 1992-94) (class action seeking reimbursement for
9 warranty repairs from all major electronics manufacturers);
 - 10 • *Lewis v. Hamilton Oil Corp.*, No. 91 Civ. 2328 (LMM)
11 (U.S.D.C., S.D.N.Y 1991) (class action challenge to the \$4.3
12 billion acquisition of Hamilton Oil Corporation by Broken Hill
13 Proprietary Company);
 - 14 • *Shields v. IMA Holdings Corp.*, No. BC024539 (Cal. Super. Ct.
15 1991) (class action for fraud and breaches of fiduciary duty in
16 connection with sale of company).

17 7. Part of the value that I bring to this case is my understanding of
18 the trial process and willingness and ability to try all of my cases if necessary and
19 to prepare each case as if it will be tried, including this one. My practice in
20 complex litigation over the years, including my extensive trial practice, has given
21 me a significant amount of expertise strategizing in high stakes litigation, which
22 was critical at various stages of this litigation. I have tried over 20 cases. Even
23 during the pendency of this highly contested lawsuit, I participated in four
24 extremely complex commercial matters (aside from the actions mentioned above),
25 including:

- 26 • *Energy Transfer Partners LP v. Enter. Prods. Partners LP*, No.
27 DC1112677 (Tex. Dist. 2011-15) (as lead counsel, obtained
28 unanimous jury verdict after a five week trial in Texas state

1 court where plaintiffs sought in excess of \$1 billion, and where
2 plaintiffs succeeded in obtaining a judgment against a co-
3 defendant in excess of \$500 million);

- 4 • *Brinckerhoff v. Enbridge Energy Co., Inc.*, C.A. No. 5526-VCN
5 (Del. 2013) (as lead counsel, successfully defeated derivative
6 and class action lawsuit seeking approximately \$300 million or
7 to unwind the restructuring of the Alberta Clipper pipeline;
8 representation included two arguments before the Delaware
9 Supreme Court, with the favorable motion on that decision
10 published at 67 A.3d 369, 373 (Del. 2013));
- 11 • *ABN AMRO v. MBIA*, 962 N.Y.S.2d 854 (N.Y. Sup. Ct. 2013)
12 (counsel for leading financial institutions challenging MBIA's
13 2009 multi-billion restructuring, including a five-week
14 evidentiary hearing in New York State Supreme Court); and
- 15 • *NXP Semiconductors USA, Inc. v. Exatel Visual Sys., LTD*, No.
16 10-cv-01808-RJL (D.C. 2010-11) (as lead counsel, successfully
17 defeated, in whole, an \$80 million damage claim against NXP
18 Semiconductors mid-way through the hearing of an in ICDR
19 Arbitration and related federal court proceedings).

20 8. For my work, I have been recognized by my peers and by
21 various courts. I am a Fellow and a contributing member of the Complex
22 Litigation Committee of the American College of Trial Lawyers, one of the
23 premier legal professional associations in America. Fellowship in the College is
24 extended by invitation only after careful investigation by peers to ensure each
25 candidate "demonstrates the highest degree of professionalism, ethics, and
26 civility." *See* President's Message, <http://www.actl.com>. To be invited, a Fellow
27 must be active in trial practice for more than 15 years and be recognized by the
28 judges they practice before and the opponents they face as being among the very

1 best trial lawyers in the state. *Id.* The College is dedicated to maintaining and
2 improving the standards of trial practice, the administration of justice, and the
3 ethics of the profession. *Id.* I am one of only about 90 attorneys listed in the
4 fellowship directory for Los Angeles, many of whom are retired. *See* Attorneys
5 Directory, [http://www.actl.com/Source/Members/actl_Search.cfm?section](http://www.actl.com/Source/Members/actl_Search.cfm?section=Attorney_Directory)
6 =Attorney_Directory.

7 9. I am also a Fellow in the Litigation Counsel of America
8 (“LCA”), another invitation-only trial honorary society. There are only 3,500
9 fellows peer-selected, accounting for less than one-half of one percent of American
10 lawyers. *See* LCA Proven Trial Lawyers, Overview,
11 <http://www.litcounsel.org/about/>. Fellows are selected after a rigorous evaluation
12 process for “effectiveness and accomplishment in litigation and trial work,” as well
13 as an upstanding “ethical reputation.” *Id.* The selection process includes Fellow
14 review, research, nominations, attorney feedback, evaluation of client selection of
15 counsel, input from active and retired judges, and reviews of acknowledgement
16 and recognition by other peer reviewing sources and associations. *Id.* There are
17 approximately 94 fellows listed in the LCA directory for the Los Angeles Area.
18 *See* LCA Fellows Directory, <http://www.litcounsel.org/directory/>.

19 10. Over the years, I have been consistently recognized in different
20 areas of litigation, including by Chambers USA (2012-2015), Best Lawyers in
21 America (2007-2015), Los Angeles’ Best Lawyers (2012), Super Lawyers
22 Corporate Counsel Edition (2008-2011), Southern California Super Lawyers
23 (2009-2015), The Legal 500 United States (2014) and by BTI Consulting Group as
24 a BTI Client Service All-Star (2013). I have received the following awards for my
25 work in this matter: the American Lawyer Global Awards for Global Pro Bono
26 Dispute of the Year (2014), the National Legal Aid and Defender Association’s
27 Beacon of Justice Award (2014), and the American Immigrants Lawyers
28

1 Association's Jack Wasserman Memorial Award for Excellence in Litigation
2 (2014), among others.

3 11. My specialized experience and knowledge of complex class
4 actions, discovery practice, trial preparation, and litigation strategy were important
5 for the successful litigation of this matter. My experience defending class actions
6 was integral to our Plaintiffs' success in framing the classes in this case, obtaining
7 class certification, and then defending this Court's class certification ruling against
8 numerous challenges from the Government. In addition, this case required
9 strategic thinking at every stage. Throughout this case, I have been instrumental in
10 formulating case strategy and interacting with co-counsel, opposing counsel and
11 the Court. I prepared for and went to numerous hearings and conferences, taking
12 time away from my separate caseload. I also took a leading role in Plaintiffs'
13 written correspondence, motions and negotiations.

14 12. My work on this case continued at all times throughout the last
15 five-plus years. I have spent more than 1,243 hours on this matter. Like any other
16 matter, I have dedicated myself to the success of my clients, and strived to be
17 available at all times, even when I was traveling for other matters or on vacation
18 with my family (including participating in arguments before Judge Bristow during
19 several planned family vacations).

20 13. My expertise was necessary to ensure the success of this
21 litigation. Based on my own experience representing both paying and *pro bono*
22 clients, I am confident that an attorney with my extensive knowledge,
23 qualifications and experience, as described herein, in this geographic area would
24 not have handled a case of this extraordinary complexity and importance for less
25 than the rate I am including in this motion, and certainly not at the current statutory
26 rate under the Equal Access to Justice Act ("EAJA"), which is \$189.68 for FY
27 2015.

28

1 **B. Qualifications of Sullivan & Cromwell LLP's Associates**

2 14. In addition to making the decision to take on this case, I also
3 recruited a team of associates to work with me. Over the life span of this litigation,
4 a total of eight Sullivan & Cromwell LLP associates—under my sole supervision,
5 and usually only two to three participating actively at any given time—have
6 worked on this matter in addition to the rest of their active caseloads. Outside of
7 the work completed for the *Franco* litigation, all of our associates have complex
8 commercial litigation experience in federal and state court, and serve a diverse
9 range of clients. I provide below a brief summary of each of their qualifications:

10 15. ***Damion D. D. Robinson*** received his J.D. from UCLA School
11 of Law in 2007, where he earned Order of the Coif recognition. Mr. Robinson
12 went on to clerk for the Honorable David O. Carter from 2007 to 2008, before
13 joining the Sullivan & Cromwell LLP team. He worked on the *Franco* litigation
14 from April 27, 2010 to January 13, 2012, during which he won the Pro Bono
15 Attorney of the Month from Kids in Need of Defense (KIND). Mr. Robinson
16 dedicated a total of 322.25 hours to the *Franco* litigation, and Sullivan &
17 Cromwell LLP is only including 269.5 hours in the fee motion: 112.0 in Period 2,
18 39.5 in Period 3, 95.25 in Period 4, and 22.75 in Period 5. This is a 16.36%
19 discount, reflecting the billing judgments described herein. Although we are only
20 seeking \$865/hour here, Sullivan & Cromwell LLP regularly achieves rates higher
21 than that when billing work of associates of Mr. Robinson's class to other clients.

22 16. ***Shawn J. Lichaa*** received his J.D. from the University of
23 California, Berkeley, School of Law in 2007, graduating near the top of his class
24 and earning not only the Jurisprudence American Awards, which requires a top
25 score in four classes, but also the Prosser Award, which recognizes the second
26 highest score in one class. While at Law School, Mr. Lichaa earned recognition
27 for the most outstanding oral argument in his Written & Oral Advocacy class. Mr.
28 Lichaa worked on the *Franco* litigation since its inception, until January of 2013,

1 when he left Sullivan & Cromwell LLP to work for Fenwick and West. He is now
2 legal counsel at Gilead Sciences. Mr. Lichaa dedicated 1705.75 hours to this
3 litigation from May 17, 2010 to January 4, 2013, but Sullivan & Cromwell LLP is
4 only requesting reimbursement for 1638.5 in the fee motion: 477.0 in Period 2,
5 431.75 in Period 3, 448.75 in Period 4, and 281.0 in Period 5. This is
6 approximately a 4% discount, reflecting the billing judgments described herein.
7 Although we are only seeking \$865/hour here, Sullivan & Cromwell LLP regularly
8 achieves rates higher than that when billing work of associates of Mr. Lichaa's
9 class to other clients.

10 17. *Asel M. Aliyasova* received her J.D. from Yale School of Law
11 in 2008 and a Master's Degree from Boston College in 2005. While at Yale, Ms.
12 Aliyasova worked as a Research Assistant for Professor Ian Ayres and was the
13 editor-in-chief of the Yale Journal on Regulation. Ms. Aliyasova worked on the
14 *Franco* litigation since its inception, until late June of 2014. In June of 2014, she
15 left Sullivan & Cromwell LLP to become senior counsel with the global litigation
16 group at GlaxoSmithKline. She is also fluent in Russian, Turkish, and Kyrgyz,
17 which was an added benefit because of her ability to communicate directly with
18 some of our class members who spoke Russian. For example, Ms. Aliyasova was
19 involved in virtually all communication for Plaintiffs with the Zhalezny family,
20 and played a critical role in preparing Piotr Zhalezny for a deposition, because she
21 was able to bring to bear her knowledge and experience of deposition practice in
22 Russian, without our having to hire an interpreter. Ms. Aliyasova's total dedicated
23 hours are 1114, but Sullivan & Cromwell LLP is only including 1024.5 hours in
24 the fee motion: 202.75 in Period 2, 269.25 in Period 3, 58.5 in Period 4, 240.5 in
25 Period 5, and 261.75 in Period 6. This is a 7.29% discount, reflecting the billing
26 judgments described herein. Although we are only seeking \$850/hour here,
27 Sullivan & Cromwell LLP regularly achieves rates higher than that when billing
28 work of associates of Ms. Aliyasova's class to other clients.

1 18. **Theresa A. Buckley** received her J.D. from the University of
2 California, Berkeley, School of Law in 2008, after serving on the California Law
3 Review as the Executive Editor and winning the Jurisprudence Award in Family
4 Law. Ms. Buckley worked on the *Franco* litigation since its inception, until
5 January of 2012, when she left Sullivan & Cromwell LLP to become an associate
6 at Crowell & Moring LLP. She is now Associate General Counsel for Litigation
7 and Risk Management at SunEdison. Ms. Buckley dedicated 584.75 hours from
8 May 26, 2010 to January 20, 2012. Sullivan & Cromwell LLP is only seeking
9 502.0 hours for Ms. Buckley: 232.5 in Period 2, 68.5 in Period 3, 183.25 in Period
10 4, and 17.75 in Period 5. This is a 14.15% discount, reflecting the billing
11 judgments described herein. Although we are only seeking \$850/hour here,
12 Sullivan & Cromwell LLP regularly achieves rates higher than that when billing
13 work of associates of Ms. Buckley's class to other clients.

14 19. **Alexa M. Lawson-Remer** received her J.D. from the University
15 of California Gould School of Law in 2007. Ms. Lawson-Remer has gained
16 extensive experience in complex litigation since she joined Sullivan & Cromwell
17 LLP in 2007. In addition, she has an active pro bono practice. Outside of the
18 *Franco* litigation, Ms. Lawson-Remer has also assisted in securing asylum for a
19 Guatemalan refugee, who fled to the United States at the age of 17 to escape
20 physical torture and sexual abuse. Ms. Lawson-Remer began working on this
21 matter on May 21, 2010. Her total hours dedicated to this litigation are 1041.75.
22 Sullivan & Cromwell LLP is only including 504.5 of Ms. Lawson-Remer's hours
23 in the fee motion: 165.75 in Period 2, 45.5 in Period 3, 69.5 in Period 4, 192.75 in
24 Period 5, and 31.0 in Period 6. This is a 51.57% discount, reflecting the billing
25 judgments described herein, and the decision not to bill certain time related to
26 monitoring. Although we are only seeking \$800/hour here, Sullivan & Cromwell
27 LLP regularly achieves rates higher than that when billing work of associates of
28 Ms. Lawson-Remer's class to other clients.

1 20. *Antonia E. Stamenova-Dancheva* received her J.D. from
2 UCLA School of Law in 2009. While at law school, Ms. Stamenova-Dancheva
3 was the Co-Editor In Chief of UCLA's Journal of International Law and Foreign
4 Affairs. Ms. Stamenova-Dancheva was born in Sofia, Bulgaria and is fluent in
5 English and Bulgarian. Ms. Stamenova-Dancheva began working on this litigation
6 shortly after its inception on May 11, 2010, and has remained working on it
7 throughout most of the five years in which it has been active. Her total dedicated
8 hours are 1567.5, but Sullivan & Cromwell LLP is only requesting 1413.75
9 number of hours in the fee motion: 200.75 in Period 2, 48.25 in Period 3, 137.5 in
10 Period 4, 371.75 in Period 5, 652.5 in Period 6, and 3.0 in Period 7. This is a 9.8%
11 discount, reflecting the billing judgments described herein. Although we are only
12 seeking \$800/hour here, Sullivan & Cromwell LLP regularly achieves rates higher
13 than that when billing work of associates of Ms. Stamenova-Dancheva's class to
14 other clients.

15 21. *Michael P. Murtagh* received his J.D. from UC Hastings
16 College of Law in 2010, graduating *summa cum laude*, Valedictorian and earning
17 Order of the Coif. While at Hastings, Mr. Murtagh served on the Hastings Law
18 Journal, first as a member and then as a Managing Notes Editor. He also earned
19 Best Brief in Moot Court class and was an active member of a Moot Court team, a
20 Moot Court coach and a member of the Moot Court Board. He received the
21 Witkin and CALI orders (top student in class) for 12 classes at Hastings and also
22 graduated first in his class while earning a Comparative Constitutional Law L.L.M
23 in 2007. Mr. Murtagh has published his L.L.M. thesis, Law Journal note and,
24 while working at Sullivan & Cromwell LLP, a law review article on class actions³
25 and an article regarding fraud claims in New York. He began his career with

26 _____
27 ³ Michael P. Murtagh, *The Rule 23(b)(3) Superiority Requirement and*
28 *Transnational Class Actions: Excluding Foreign Class Members in Favor of*
European Remedies, 34 *Hastings Int'l & Comp. L. Rev.* 1 (2011).

1 Sullivan & Cromwell LLP in 2010, and then went on to clerk for the same Judge
2 that I clerked for (The Honorable Thomas P. Griesa of the United States District
3 Court in the Southern District of New York) from 2011-2012, before returning to
4 Sullivan & Cromwell LLP in 2012. Mr. Murtagh is admitted to practice law in
5 both California and New York. Mr. Murtagh joined the *Franco* litigation team on
6 July 31, 2012, shortly after his return to the firm, and has been a consistent
7 member of the team ever since. He has dedicated 1269.5 hours to this matter.
8 Sullivan & Cromwell LLP has only included 1153.75 of his hours in the fee
9 motion: 688.0 in Period 5, 298.5 in Period 6, and 167.25 in Period 7. This is a
10 9.11% discount, reflecting the billing judgment described herein. Although we are
11 only seeking \$750/hour here, Sullivan & Cromwell LLP regularly achieves rates
12 higher than that when billing work of associates of Mr. Murtagh's class to other
13 clients.

14 22. **Lauren M. Cruz** received her J.D. from New York University
15 School of Law in 2014, while serving as the Senior Articles Editor of the *Journal*
16 *of Law and Liberty* and a Staff Editor of the *Environmental Law Journal*. Ms.
17 Cruz joined the *Franco* team shortly after joining the firm in 2014, and has been a
18 consistent member of the team ever since. She has dedicated a total of 522.25
19 hours to this case, but the number of hours included in the fee motion for Ms. Cruz
20 is 248.75: 61.0 in Period 6 and 187.75 in Period 7. This is a 52.36% discount,
21 reflecting the billing judgment described herein, and an exclusion of all of her
22 work relating to this motion. Ms. Cruz also dedicated 89.25 hours to this case as a
23 summer associate in Period 6, but we are not seeking compensation for those
24 hours. Although we are only seeking \$370/hour here, Sullivan & Cromwell LLP
25 regularly achieves rates higher than that when billing work of associates of Ms.
26 Cruz's class to other clients.

27 //

28

1 **II. SULLIVAN & CROMWELL LLP'S BILLING PHILOSOPHY**

2 23. I, along with the team of Sullivan & Cromwell LLP associates,
3 have dedicated over 9,000 hours to litigating this case. Including time spent by
4 non-lawyer staff members and summer associates, Sullivan & Cromwell LLP has
5 identified a total of 11,910.0 total hours on work related to this case.

6 24. Sullivan & Cromwell's traditional billing philosophy is based
7 on the value of the professional advice and services we provide, and not the hours
8 spent on any particular matter. The objective is to set a fee that is fair and
9 reasonable, competitive and satisfactory to the client. We believe that value is
10 determined by balancing several factors, including, but not limited to, (a) the
11 contribution made, responsibility assumed, amount involved and results achieved;
12 (b) the novelty, complexity and difficulty of the questions presented and the skills
13 required; (c) any extraordinary efforts required to meet time constraints or other
14 requirements imposed by the client or the circumstances; and (d) the time and labor
15 required and the experience of those performing the services. *See also* ABA
16 MODEL RULES OF PROF'L CONDUCT R. 1.5 and CAL. R. OF PROF. CONDUCT 4-200.

17 **A. Sullivan & Cromwell LLP's Billing on this Matter**

18 25. We are able to achieve the rates we do from our clients, owing
19 to their view (with a vast array of choices and competitive information available to
20 them) that we are worth what we charge them. Nonetheless, I am requesting fees
21 for my time below the rates paid by any of my corporate or individual clients this
22 year, even those for whom I give a discount due to our longstanding relationship.
23 In addition, as I explain further below, the rates I seek here are below those
24 approved by courts as reasonable for me (or other litigation partners of Sullivan &
25 Cromwell LLP).

26 26. Similarly, the rates set forth below for the associates who
27 worked on this case are below those set by courts in analogous situations involving
28 associates from our firm.

1 27. Through this Motion, we are seeking attorneys' fees at the
2 following rates for fees awarded pursuant to the Rehabilitation Act:⁴

- 3 • Michael H. Steinberg \$1,040.00;
- 4 • Damion D.D. Robinson \$865;
- 5 • Shawn J. Lichaa \$865;
- 6 • Asel M. Aliyasova \$850;
- 7 • Theresa A. Buckley \$850;
- 8 • Alexa M. Lawson-Remer \$800;
- 9 • Antonia E. Stamenova-Dancheva \$800;
- 10 • Michael P. Murtagh \$750; and
- 11 • Lauren M. Cruz \$370.

12 28. We also identify the following rates for our support staff for
13 fees awarded pursuant to the Rehabilitation Act: summer associates (see note
14 below) at \$220; e-discovery, litigation support specialists, and librarians at \$290;
15 and project assistants and legal assistants at \$255. (As I note below, we are *not*
16 seeking payment for any of the work performed by our summer associates. We
17 identify a rate solely to show the value of the hours we have waived.)

18 29. For fees awarded pursuant to the EAJA, we are seeking to
19 recover the following historic market rates for the work I personally did over the
20 course of this litigation, all of which are below the rates I billed my commercial
21 clients for my time during the respective years listed below:

- 22 • 2010 - \$890/hour
- 23 • 2011 - \$950/hour
- 24 • 2012 - \$1,000/hour
- 25 • 2013 - \$1,010/hour

26 _____
27 ⁴ The rates for Sullivan & Cromwell LLP associates were chosen based upon the
28 lowest of the most recent rates approved by courts for Sullivan & Cromwell LLP
attorneys.

- 1 • 2014 - \$1,020/hour
- 2 • 2015 - \$1,040/hour

3 30. For Sullivan & Cromwell LLP associates and support staff, we
4 are seeking the EAJA statutory maximum rates for fees awarded pursuant to
5 EAJA.

6 31. The methodology for allocating the hours worked on this case
7 between the Rehabilitation Act and the EAJA is explained in Sub-Exhibit E to the
8 Declaration of Ahilan Arulanantham in Support of Plaintiffs' Motion for
9 Attorneys' Fees. I utilized that methodology to allocate the hours Sullivan &
10 Cromwell LLP spent in this case between the two statutes and to calculate our
11 lodestar. Our lodestar for this matter, comprised of 9,410 total hours at the rates
12 described above, is \$6,131,803.23.

13 **B. Daily Time Entries and Time Charged**

14 32. Attached as Exhibit B is a detailed and itemized accounting of
15 the time for which Sullivan & Cromwell LLP is seeking fees. The time entries in
16 Exhibit B are records maintained by Sullivan & Cromwell LLP beginning in April
17 2010 through June 30, 2015. These time entries are generated from data input
18 based upon each individual attorney's or non-attorney's timesheet maintained by
19 the attorney or non-attorney in question contemporaneously, or nearly
20 contemporaneously, with the performance of the activity indicated. The time
21 entries are organized by day and task, and divided among the fee periods. I have
22 personally reviewed these time entries and found them sufficient to determine what
23 tasks are being performed and the amount of time spent on the tasks, particularly
24 given my direct involvement in the matter.

25 33. For my own entries, I take deep personal pride in being
26 available and responsive to my clients at all times of the day. Because of the
27 amount of contact, I keep a running total of my daily tasks in an open email in
28 which I identify the times dedicated to each client. At the end of each day, I

1 identify all of the major tasks in that email, which I then provide to my assistant to
2 input.

3 34. I have reviewed the time records of the timekeepers involved
4 (including my own) in assessing the Sullivan & Cromwell LLP lodestar. In the
5 exercise of billing judgment, Sullivan & Cromwell LLP is only seeking
6 compensation for 9410 hours—a reduction of 20.99% of the hours recorded.
7 Sullivan & Cromwell LLP is not seeking fees in whole for certain projects, and has
8 discounted or reduced the hours of many other projects and timekeepers. As an
9 example, although multiple Sullivan & Cromwell LLP team members typically
10 joined a weekly call with our co-counsel to discuss strategy and developments, we
11 are only seeking recovery for the most senior lawyer involved in those calls.
12 Therefore, we are only seeking fees for one Sullivan & Cromwell LLP attorney, no
13 matter how many participated in each call. Although these group calls enabled our
14 team to operate more efficiently and to achieve solutions to litigation issues we
15 faced, we are not seeking all of the hours associated with them.

16 35. Similarly, where one or more of Sullivan & Cromwell LLP
17 lawyer attended hearings with the Court or Special Master, we are generally only
18 seeking fees for the time of the most senior of those lawyers. We have also
19 subtracted all time relating to press announcements and publicity, even though we
20 understand that they are compensable.

21 36. Although Sullivan & Cromwell LLP summer associates billed
22 over 870 hours to this matter over the last several years, we are not requesting
23 payment for any of their time. We have chosen not to submit their time even
24 though their work undoubtedly contributed to our success in this litigation and
25 saved attorney hours, and even though it is compensable under governing law.

26 37. Additionally, given the high demands that this case put on
27 Sullivan & Cromwell LLP associates over the course of several years, even in the
28 face of an otherwise full caseload, I felt the need to always have associates

1 apprised of the relevant issues so that they could contribute to projects as needed.
2 As a result, I have excluded certain additional associate hours as an exercise of
3 billing judgment.

4 38. Finally, we have reduced the hours we are seeking since the
5 Court's Permanent Injunction (Dkt. 593), including excluding substantial attorney
6 hours from several timekeepers and all but one support staff member, even though
7 Plaintiffs have successfully litigated numerous complex and contested issues over
8 the last two years, including most recently the numerous filings and conferences
9 culminating in the Court entering, over the Government's objections, its Order
10 Appointing Monitor (Dkt. 810) ("Monitoring Order"). We also are not seeking
11 compensation for Lauren Cruz's time spent preparing the fee motion, totaling over
12 230 hours, although her efforts benefitted the entire litigation team and we believe
13 we are entitled to recover our attorneys' fees for such work.

14 **C. Expenses**

15 39. In addition, Sullivan & Cromwell LLP charges its paying
16 clients for disbursements we incur in connection with other engagements, such as
17 disbursements to third parties, travel costs and significant copying jobs. The firm
18 does not charge its clients for Lexis, Westlaw, or the use of other standard
19 databases, ordinary word processing, or incidental phone calls, postage, document
20 retrieval and faxes. However, these costs are incurred and treated as overhead, to
21 be included in the hourly rates. Sullivan & Cromwell LLP frequently incurred
22 costly disbursements on behalf of the Class, including transcripts of depositions
23 and hearings. Sullivan & Cromwell LLP had a total of \$101,488.70 in costs for
24 this matter.⁵

25
26
27 ⁵ Attached as Exhibit C is a detailed and itemized accounting of the
28 disbursements for which Sullivan & Cromwell LLP is seeking reimbursement.

1 40. Of the over one hundred thousand dollars in costs that Sullivan
2 & Cromwell LLP spent on this litigation since its inception, Sullivan & Cromwell
3 LLP is only seeking reimbursement for \$53,740.41. This number includes Courier
4 and Public Messenger fees of \$6,331.77, local transportation expenses of
5 \$3,125.49, out-of-town meals totaling \$686.19, attorney travel expenses totaling
6 \$8,584.39, outside professional services at \$2,550.00, and conference or
7 videoconference costs of \$1,930.15. The local transportation expenses include
8 items such as parking for court hearings, and traveling expense from the airport to
9 Sullivan & Cromwell LLP offices. The out-of-town travel expenses have been
10 significantly reduced. For example, on June 21, 2011, I travelled to the District of
11 Columbia to take a 30(b)(6) deposition. My hotel expenses were \$486.63 and my
12 round-trip flight totaled \$2,349.10, but those amounts were not for “coach” travel
13 and I selected a hotel close to my D.C. office where the deposition was set to take
14 place, rather than looking for a less expensive hotel farther away. To account for
15 this more broadly, I have applied a 33% cut to all out-of-town travel and meal
16 expenses for all lawyers.

17 41. Sullivan & Cromwell LLP is also seeking reimbursement for
18 other costs, including filing fees for \$1,638.15, deposition transcripts used to draft
19 briefing and other case documents for \$21,668.61, hearing transcripts for
20 \$5,155.86, other transcripts necessary to the case for \$1,040.25, and outside
21 reproduction expenses totaling \$1,029.56.

22 **III. SULLIVAN & CROMWELL LLP AND MICHAEL STEINBERG’S**
23 **HISTORY OF RATES ACHIEVED**

24 42. Courts have approved the hourly rates of attorneys working for
25 Sullivan & Cromwell LLP on several occasions in the past. Sullivan & Cromwell
26 LLP does not have different “prices” or rates for different locations in the United
27 States; in the markets in which we participate, the work is judged among a national
28 market of lawyers familiar with highly complex litigation. For example, in 2014

1 and 2015, my cases have principally been litigated in locations outside of
2 California, including (i) New York City; (ii) Dallas, Texas; (iii) Seattle,
3 Washington; (iv) Toledo, Ohio; and (v) Winnebago County, Illinois.

4 43. Sullivan & Cromwell LLP's rates are rarely litigated.
5 However, I have attached the only three comprehensive analyses of Sullivan &
6 Cromwell LLP's billing and rate structures for partners and associates that I am
7 aware of. Two of these decisions (*Kodak* and *EFH*) are from complex matters in
8 bankruptcy court where a variety of Sullivan & Cromwell LLP lawyers, including
9 litigation partners and associates, represented the debtor in connection with
10 complex commercial disputes, and one is from the *McCourt* litigation, where a Los
11 Angeles-based team of Sullivan & Cromwell LLP lawyers represented Frank
12 McCourt in an action to set aside a marital property settlement agreement on the
13 basis of fraud concerning the value of the Los Angeles Dodgers.

14 44. Attached hereto as Exhibit D is a copy of the Court's decision
15 in *Energy Future Holdings Corp.*, No. 14-10979, slip op. at 3 (CSS) (Bankr.
16 D.Del. January 12, 2015), and the accompanying Application For An Order
17 Authorizing the Retention and Employment of Sullivan & Cromwell LLP as
18 Counsel. In this recent decision, the bankruptcy court in the District of
19 Delaware—upon an extensive record—upholds hourly rates of Sullivan &
20 Cromwell LLP partners of my seniority to be \$1,295, associate rates between
21 \$460-\$865, and legal assistants between \$225-\$355, as well as other timekeepers
22 such as electronic discovery personnel at rates between \$315-\$355, Project
23 Assistants between \$225-\$335, and Research Librarians between \$225-\$355. The
24 fees represented a discount from the rates used by Sullivan & Cromwell LLP when
25 preparing estimates of fees under its normal billing procedures.

26 45. Attached hereto as Exhibit E is a copy of the Court's decision
27 in *In re McCourt v. McCourt*, No. BD514309, slip op. at 28, 33 (Cal. Super. Ct.
28 June 24, 2014). In this recent decision, the Los Angeles Superior Court upheld

1 hourly rates of Sullivan & Cromwell LLP partners of my seniority to be between
2 \$1,130 and \$1,390, associate rates between \$430-\$875, legal assistants at \$255,
3 and research librarians at \$290.

4 46. Attached hereto as Exhibit F is a copy of the Court's decision in
5 *In re Eastman Kodak Co.*, No. 12-10202 (ALG), slip op. at 2-3 (Bankr. S.D.N.Y.
6 Dec. 03, 2013), and accompanying excerpts of the Summary of Fourth Interim Fee
7 Application and the Fifth and Final Interim Fee Applications of Sullivan &
8 Cromwell LLP. This order, which will be nearly two years old at the time the
9 Court hears the instant fee motion, reflects the rates charged by Sullivan &
10 Cromwell LLP lawyers and nonlawyer staff in the Kodak bankruptcy and approved
11 by the United States Bankruptcy Court for the Southern District of New York. The
12 Order upholds rates of Sullivan & Cromwell LLP partners of my seniority to be
13 between \$990 and \$1,150, associate rates between \$395-\$875, legal assistant rates
14 between \$255-\$290, and legal librarians at \$290.

15 47. Finally, the Ninth Circuit approved my own legal fees eight
16 years ago. Attached as Exhibit G is a copy of the Ninth Circuit's decision in
17 *Softbank Content Servs. Inc. v. MPO Canada Inc.*, 225 F. App'x. 687, 690 (9th
18 Cir. 2007), upholding my fee award.

19 48. Below is a chart showing the highest rates approved for
20 Sullivan & Cromwell LLP associates in the above mentioned cases, for associates
21 of comparable class years.

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Associate	Class Year	Hourly Rates Sought in This Case	Comparable Energy Future Hourly Rate (2014) Associate Range \$460-865	Comparable McCourt Hourly Rate (2013) Associate Range: \$430-875	Comparable Kodak Hourly Rate (2013) Associate Range: \$395-875
Damion D.D. Robinson	2007	\$865	\$865	\$875	\$850
Shawn J. Lichaa	2007	\$865	\$865	\$875	\$850
Asel M. Aliyasova	2008	\$850	\$865	N/A	\$850
Theresa A. Buckley	2008	\$850	\$865	N/A	\$850
Alexa M. Lawson-Remer	2009	\$800	\$865	N/A	\$825
Antonia Stamenova-Dancheva	2009	\$800	\$865	N/A	\$825
Michael P. Murtagh	2010	\$750	\$855	N/A	\$800
Lauren M. Cruz	2014	\$370	\$460	\$430 ⁶	\$345 ⁷

49. The rates requested in this Motion are competitive in the market in which I work. As part of providing value to my clients, I track the rates used by other competitive firms. Below is a sample of the firms with which I regularly, and successfully, compete to both garner and maintain a vast client base.

Category	Gibson Dunn	Latham & Watkins	Skadden	Quinn Emanuel	Morrison & Foerster	Orrick Herrington & Sutcliffe
Partner High	\$1,800	\$1,110	\$1,150	\$1,075	\$1,195	\$1,095
Partner Average	\$980	\$990	\$1,035	\$915	\$865	\$845
Associate High	\$930	\$725	\$845	\$675	\$725	\$710
Associate Average	\$590	\$605	\$620	\$410	\$525	\$560

⁶ This rate was for an associate with two years of experience.

⁷ This range is for a 2013 graduate, a first year associate when the fees were requested.

1 *Billing Rates at the Nation's Priciest Law Firms*, Nat'l L.J (Online), (Jan. 5, 2015),
2 <http://www.nationallawjournal.com/id=1202713889426?keywords=billing&slreturn=20150630205331>.

4 50. I have also reviewed publicly available materials reflecting the
5 rates of other firms with which Sullivan & Cromwell LLP regularly competes for
6 commercial clients, which are similar to the rates Sullivan & Cromwell LLP seeks
7 through this motion.

8 51. Attached hereto as Exhibit H is a true and correct copy of an
9 excerpt from the application of Kirkland & Ellis LLP for retention as debtors'
10 counsel in *In re Sbarro LLC*, No. 14-10557 (MB) (Bankr. S.D.N.Y.), showing
11 2014 hourly rates ranging from \$450 to \$835 for associates and partners from \$665
12 to \$1225.

13 52. Attached hereto as Exhibit I is a true and correct copy of an
14 excerpt from the application of Latham & Watkins LLP for retention as debtors'
15 counsel in *In re Tuscan International Holdings (U.S.A.) Ltd.*, No. 14-10193 (KB)
16 (Bankr. D. Del.), showing 2014 hourly rates ranging from \$395 to \$855 for
17 associates and \$875 to \$1275 for partners.

18 53. Attached hereto as Exhibit J is a true and correct copy of an
19 excerpt from the First Interim Fee Application of Skadden, Arps, Slate, Meagher &
20 Flom LLP, counsel for debtors in *In re Excel Maritime Carries Ltd.*, No. 13-23060
21 (RDD) (Bankr. S.D.N.Y.), showing 2013 hourly rates ranging from \$425 (class of
22 2013) to \$755 for associates and from \$795 to \$1,910 for partners.

23 **IV. SULLIVAN & CROMWELL LLP DEDICATION TO PRO BONO**

24 54. Sullivan & Cromwell LLP is dedicated to pro bono work, and
25 considers it an important commitment of every lawyer. In 2014, Sullivan &
26 Cromwell LLP devoted more than 65,000 hours to a range of pro bono activities,
27 and served untold individuals as well as legal, charitable, and government
28 organizations. *See Pro Bono*, <http://www.sullcrom.com/pro-bono>. Some of

1 Sullivan & Cromwell LLP's signature projects include Bet Tzedek Holocaust
2 Reparations Project, Sanctuary for Families' U Visa Project, Transgender Legal
3 Defense and Education Fund's name change clinic, Microsoft KIND, and the
4 Sullivan and Cromwell Foundation.⁸ See Pro Bono, [http://www.sullcrom.com/pro-](http://www.sullcrom.com/pro-bono?view=Representations)
5 [bono?view=Representations](http://www.sullcrom.com/pro-bono?view=Representations).

6 55. Sullivan & Cromwell LLP takes pride in not only taking part in
7 large-scale efforts, but upholding justice under the laws for every person, even
8 when protecting one individual at a time. I too have a long history of dedication to
9 pro bono work. As a member of the firm's Pro Bono Committee as well as a
10 member of the Board of Directors and Executive Committee of Public Counsel, I
11 dedicate myself to pro bono matters like any other professional responsibility. As
12 an example, I represented Bruce Sons for 11 years and obtained his freedom in a
13 case where he was convicted in 1994 of premeditated murder. It was after Mr.
14 Sons was sentenced that we became involved in his representation. After over a
15 decade of devotion by the Sullivan & Cromwell LLP team, and three retrials, Mr.
16 Sons has been freed. Appellate decisions related to this representation can be
17 found at 22 Cal. Rptr. 3d 647 (Cal. App. Dep't Super. Ct. 2004) and 78 Cal. Rptr.
18 3d 679 (Cal. Ct. App. 2008).

19 **V. DEFENDANTS' LITIGATION CONDUCT DRASTICALLY**
20 **INCREASED SULLIVAN & CROMWELL'S HOURS**

21 56. Defendants' litigation conduct dramatically increased the
22 amount of time that Sullivan & Cromwell LLP needed to expend in litigating this
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24 ⁸ "Since its inception in 2001, the Foundation has collected and disbursed more
25 than \$2.4 million in contributions to aid those affected by the September 11 attacks
26 on the World Trade Center and the Pentagon; organizations dedicated to rebuilding
27 the Downtown and Battery Park areas of New York City; organizations dedicated
28 to providing aid to the victims of the tsunami that struck Southeast Asia; and
charitable organizations in Louisiana and Mississippi to aid the victims of
Hurricane Katrina." See Pro Bono, [http://www.sullcrom.com/pro-](http://www.sullcrom.com/pro-bono?view=Representations)
[bono?view=Representations](http://www.sullcrom.com/pro-bono?view=Representations).

1 case. For example, many of Sullivan & Cromwell LLP's billable hours were
2 expended during discovery, including class certification discovery. Owing to our
3 expertise in this area, Sullivan & Cromwell LLP took the lead on many discovery
4 and class certification issues for the Plaintiff class, and Defendants' litigation
5 strategy included contesting discovery throughout the course of the case. A
6 substantial portion of this discovery was imposed by Defendants' strategic decision
7 to oppose class certification on numerosity grounds, even though Defendants had
8 possession, custody and control of information establishing the numerosity of the
9 Class. Defendants actually argued that because they did not track the number of
10 individuals with serious mental health illnesses in their custody, we could not show
11 numerosity. *See* Dkt. 126-1, Ex. 131 at 2. This delayed class certification for
12 months and led to additional time expended, including extra briefing, hearings and,
13 unfortunately, discovery motions directed toward obtaining relevant evidence.

14 57. I and other Sullivan & Cromwell LLP attorneys also expended
15 a great deal of time litigating the merits of the class certification on numerosity
16 grounds even after our discovery efforts had revealed that the class was clearly
17 numerous under governing law. To give but one example, Defendants argued that
18 the Main Class was not numerous even though there were 112 members in it on a
19 given "snapshot" day when data was gathered. (*See* Dkt. 328 at 4-15.)

20 58. After class certification, Sullivan & Cromwell LLP, on behalf
21 of Plaintiffs, filed six motions to compel from July 11, 2012 to August 1, 2013.
22 (Dkts. 405, 406, 499, 522, 632, 633.) Oftentimes, Plaintiffs would need to seek the
23 Court's intervention again even after being successful in a prior motion. For
24 example, Plaintiffs had to file three separate motions to compel in order to secure
25 the necessary Class member files to litigate this case. (Dkts. 405, 522, 633.)
26 Again, Defendants' litigation strategy caused Plaintiffs to expend significant hours
27 seeking to compel Defendants to comply with their obligations.

28

1 59. Plaintiffs even had to file motions regarding the timing of
2 discovery motions: in one instance, Plaintiffs had to file an *ex parte* motion to
3 change a discovery motion hearing date set by the Judge Bristow because
4 Defendants' counsel refused to accommodate my family vacation. (Dkt. 429.) In
5 another instance, Plaintiffs had to file an *ex parte* motion for more time to reply to
6 a motion to compel because Defendants' counsel would not grant Plaintiffs an
7 extension of time to respond to a Local Rule 37-1 joint statement that would
8 otherwise have been due the day after the Christmas holiday, when nearly every
9 member of the team was with their families. (Dkt. 511.)

10 60. Similarly, Defendants required extensive litigation regarding
11 the appropriate form and scope of a protective order to allow for the production of
12 confidential information in discovery. Although in many cases a stipulated
13 protective order is easily negotiated between the parties, in this case it required
14 multiple hearings and conferences before Judge Bristow and the Court. (Dkts. 246,
15 278, 281, 282, 290, 291, 292, 303, 321, 462.) The Government further insisted that
16 each stipulated protective order cover only certain designated discovery requests,
17 which meant that the parties had to negotiate five protective orders over the life of
18 this case.⁹ This, also, had the consequence of making compliance with each of the
19

20 ⁹ The December 3, 2010 protective order was limited to Ex. 78 in Dkt. 60-2. *See*
21 Dkt. 84. The June 7, 2011 protective order was limited to copies of validly
22 executed ICE Form 60-001 (Privacy Waiver Authorizing Disclosure to a Third
23 Party). *See* Dkt. 214. The August 29, 2011 Protective Order was limited to a July
24 29, 2011 Joint Stipulation, consisting of A-number and mental competency
25 evaluations of ICE detainees, plus the names of individuals identified as class or
26 subclass members. *See* Dkt. 294. The January 24, 2012 protective order solely
27 governed the discovery produced as a result of Plaintiffs' October 17, 2011,
28 November 29, 2011, and December 13, 2011 requests for production, Defendants'
November 20, 2011 and January 10, 2012 requests for production, as well as any
further merits discovery. *See* Dkt. 367. The Revised November 2, 2012 protective
order governed Plaintiffs' October 17, 2011, November 29, 2011, December 13,
2011, July 13, 2012, and July 16, 2012 requests for production, and Defendants'
November 30, 2011, January 10, 2012, and August 17, 2012 requests for
production, as well as any further merits discovery propounded by the parties. *See*
Dkt. 507.

1 various (and different) protective orders difficult. Even after those orders were
2 entered, Defendants continued to object to discovery production on grounds that
3 were covered by the Protective Orders. Defendants repeatedly claimed, almost as
4 a mantra, that they could not provide responsive data to Plaintiffs' own counsel
5 absent privacy waivers from the detainees whom it concerns because the
6 information is covered by the Privacy Act, 5 U.S.C. § 522a. (*See e.g.*, Dkt. 499-1,
7 Arulananthum Dec. at ¶ 35). This necessitated constant renegotiation and litigation
8 of protective orders, even though each comprehensively governed the disclosure of
9 such information.

10 61. I also appeared at a telephonic discovery conference because
11 Defendants' former counsel, Victor Lawrence, engaged in what I considered
12 inappropriate behavior in a Rule 30(b)(6) deposition by, *inter alia*, failing to
13 properly prepare the witness on the deposition topics and instructing him not to
14 answer valid questions. Mr. Lawrence also continued to assert a *Touhy* protection
15 that Judge Bristow ruled was invalid based on controlling Ninth Circuit precedent
16 that Mr. Lawrence had failed to cite. (Dkt. 244, at 32-34.) Again, Defendants'
17 litigation conduct caused Plaintiffs to expend significantly more hours than would
18 otherwise have been necessary to secure basic discovery. As a sanction, Judge
19 Bristow gave us the opportunity to conduct the deposition again if we so wished.
20 (*See* Dkt. 234.) Because of the production of other materials (again, fought over
21 but ultimately provided), no further deposition became necessary.

22 62. During the period of time between April 29, 2011 and April 2,
23 2013, I personally argued at 12 separate discovery conferences in front of Judge
24 Bristow to resolve discovery disputes, including telephonic conferences during my
25 personal pre-scheduled vacations on July 18, 2011, August 30, 2012, and April 3,
26 2013. (Dkts. 243, 463, 578.) I viewed my personal appearance at these
27 conferences as necessary because Judge Bristow had previously directed that lead
28

1 counsel must be present at all hearings, referring to Victor Lawrence (U.S.
2 Department of Justice, Civil Division) and myself. (Dkt. 421-2.)¹⁰

3 63. Sullivan & Cromwell LLP also devoted substantial effort to the
4 four preliminary injunctions filed on behalf of individual Class members, including
5 the necessary factual development for those motions. Although Plaintiffs prevailed
6 on all of these motions (the last of which was rendered moot by the grant of
7 summary judgment), Defendants continued their scorched-earth resistance to this
8 Court's orders and did not change their policies to prospectively comply with the
9 holdings of this Court's preliminary injunction orders. *See Franco-Gonzalez v.*
10 *Holder*, 767 F. Supp. 2d 1034, 1061-62 (C.D. Cal. 2010); 828 F. Supp. 2d 1133,
11 1150 (C.D. Cal. 2011); 2011 WL 5966657, at *7, n.3 (C.D. Cal. Aug. 2, 2011)
12 (“As Andre Gide, the French author, once observed, ‘Everything has been said
13 already; but no one listens, we must always begin again.’”); 2013 WL 3674492, at
14 *20 (C.D. Ca. April 23, 2013). *See* Dkts. 107, 204, 285, 592.

15 **VI. FRANCO LITIGATION SUCCESS**

16 64. On April 23, 2013, this Court entered summary judgment on
17 Counts Four and Eight, and granted permanent injunctive relief on behalf of Sub-
18 Class One and Sub-Class Two Members, ordering Defendants to provide Qualified
19 Representatives as a reasonable accommodation and a bond hearing after 180 days
20 in detention. (Dkts. 592, 593; *Franco-Gonzalez v. Holder*, 2013 WL 8115423, at
21 *1 (C.D. Cal. Apr. 23, 2013); *Franco-Gonzalez*, 2013 WL 3674492, at *20.) Since
22 then, Sullivan & Cromwell LLP has remained actively involved in litigating the
23 remaining issues, including taking the lead on monitoring issues, and negotiating

24 _____
25 ¹⁰ The Court: “And the reason I only wanted you two gentlemen [Messrs.
26 Steinberg and Lawrence] on the call was, one, it becomes extraordinarily unwieldy
27 if all counsel want to weigh in on a topic So, for purposes of efficiency, I
28 only want two participants to speak for each side, but, more to the point, I chose
the two of you [Messrs. Steinberg and Lawrence] because I – it seems to me you
are the senior members of each side’s respective team.” (Dkt. 421-2, July 8, 2011
Telephonic Status Conference Tr. 11:13-15, 19-22.)

1 and litigating the scope of the Court’s Order Further Implementing the Court’s
2 Permanent Injunction (“Implementation Plan Order”), which was entered on
3 October 29, 2014. (Dkt. 786.) In my view, the Permanent Injunction and
4 Implementation Plan Order provide class members with important relief.

5 65. This case has fundamentally altered the legal landscape for
6 people with serious mental disabilities facing removal. So far, this lawsuit has
7 already helped hundreds of individuals obtain representation as a matter of legal
8 right. It also created an entirely new system to identify immigration detainees with
9 mental disabilities.

10 66. The Court’s Permanent Injunction is the first decision to
11 provide for free legal representation in immigration proceedings. This landmark
12 ruling has been hailed by the *National Law Journal* as the “first fundamental
13 expansion of the right to counsel in 30 years” and represents an enormous victory
14 in the fight for humane treatment of people with mental disabilities. Jenna Greene,
15 *Incompetent Immigration Detainees Win Right to Counsel*, Nat’l L.J. (Online),
16 (Apr. 25, 2013), <http://www.nationallawjournal.com/id=1202597575709>
17 *Incompetent-Immigration-Detainees-Win-Right-to-Counsel*. (See Exhibit K) The
18 New York Times notes that the decision was “the first time a court has required the
19 government to provide legal assistance for any group of people before the nation’s
20 immigration courts.” Julia Preston, *In a Fist, Judge Orders Legal Aid for Mentally*
21 *Disabled Immigrants Facing Deportation*, N.Y. TIMES, Apr. 24, 2013, at A18.
22 (See Exhibit L.) The *Los Angeles Times* editorial board applauded the decision as
23 “welcome,” and one that “could help bring more fairness to the system.” Times
24 Editorial Board, *Legal help for detainees*, (Apr. 25, 2013),
25 [http://articles.latimes.com/2013/apr/25/opinion/la-ed-mentally-ill-detainees-](http://articles.latimes.com/2013/apr/25/opinion/la-ed-mentally-ill-detainees-20130425)
26 [20130425](http://articles.latimes.com/2013/apr/25/opinion/la-ed-mentally-ill-detainees-20130425). (See Exhibit M.) Since the date of this Court’s Permanent Injunction,
27 Plaintiffs estimate that over 300 Class Members have been found not competent to
28

1 represent themselves (and thus eligible for representation by qualified
2 representatives).

3 67. Upon threat of further litigation, the Government has also
4 announced that they will extend similar protections nationwide. (Dkt. 583.)
5 During various settlement efforts, Defendants offered the “carrot” of a nationwide
6 class, if Plaintiffs would only agree to limited relief in the *Franco* case. My
7 repeated response was that we were prepared to litigate this case fully until a
8 nationwide solution was achieved. In fact, I made this point quite directly in a
9 conversation with Deputy Attorney General James Cole in early April of 2013,
10 during which I threatened to file similar lawsuits in every Circuit until I covered
11 the United States and obtained the relief that I thought was appropriate. Two
12 weeks later, the Government filed its nationwide plan before this Court,
13 undoubtedly to make my efforts to bring other cases more difficult.

14 68. The Court’s Implementation Plan Order is the first to create
15 binding screening rules for immigration detainees, require disclosure of medical
16 information in removal proceedings, establish a fixed *pro se* competency definition
17 in any context, and provide for competency evaluations for the immigration
18 system.

19 69. The Court’s Monitoring Order is the first time that Plaintiffs are
20 aware of the Department of Homeland Security being subject to a third party
21 Monitor. The Monitoring Order requires independent scrutiny and oversight of the
22 Government’s conduct, to ensure “Defendants’ ongoing compliance with the
23 Implementation Plan Documents, and that such compliance will continue without
24 the presence of a Monitor.” (Dkt. 810 at 3 n.2.)

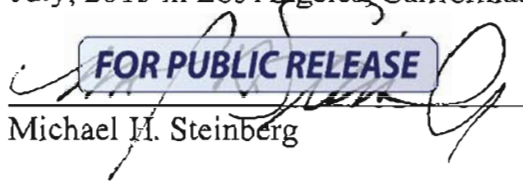
25 70. All of these landmark rulings came after significant efforts by
26 Plaintiffs’ counsel, including 11,910.0 hours of efforts by Sullivan & Cromwell
27 LLP, and they occurred despite Defendants’ vigorous opposition at every stage of
28 the case.

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71. For these reasons, Sullivan & Cromwell LLP seeks fees of \$5,599,675.53 under the Rehabilitation Act and \$532,127.72 under the EAJA.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 31st day of July, 2015 in Los Angeles, California.


FOR PUBLIC RELEASE
Michael H. Steinberg