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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHRISTIAN RODRIGUEZ, ALBERTO CAZAREZ, individually and as class representatives

Plaintiffs,

vs.

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

Defendants.

Case No.: CV11-01135 DMG (JEMx)

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

PLAINTIFFS' MOTION FOR ATTORNEY'S FEES

DATE: December 2, 2016
TIME: 10:00 a.m.
CRTRM: 7

[Filed concurrently herewith: 1) Compendium of Evidence Vols. 1 –5; 2) Ntc of Lodging; and, 3) [Proposed] Order]

Complaint Filed: February 7, 2011

[Additional counsel cont. from first page]

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TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 2, 2016, at 10:00 a.m., or as soon thereafter as the matter may be heard by the above-entitled Court, located at 312 N. Spring Street, Courtroom 7, Plaintiffs Christian Rodriguez and the Estate of Alberto Cazarez, on behalf of themselves and the Class that they represent, will, and hereby do, move the Court for an order for attorney's fees.

This motion is based on this Notice of Motion, Plaintiffs' Memorandum of Points and Authorities, the Declarations and Exhibits filed in support thereof, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing.

DATED: October 13, 2016

Respectfully Submitted,
ORANGE LAW OFFICES
PUBLIC COUNSEL
HADSELL STORMER & RENICK, LLP

By /s/ - Dan Stormer
Dan Stormer
Attorneys for Plaintiffs

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I. INTRODUCTION

This landmark class action achieved the remarkable result of curbing widespread unconstitutional practices, providing a process for expedited removal from gang injunctions presided over by a judge, and providing an economic lifeline in the form of a jobs and education program for more than 5,700 alleged gang members. It produced, in the words of the settlement officer, "the best settlement I've ever seen." Dkt. 379.

The litigation in this case spanned more than five years and was hard fought at every step. In light of the extraordinary skill with which Counsel litigated this action—reflected in the quality of the results achieved—and the enormous risk born by Counsel in accepting a case repeatedly turned down by other civil rights attorneys as essentially unwinnable, Plaintiffs' motion for fees and costs should be granted and a multiplier of 2.0 provided.

II. BACKGROUND AND PROCEDURAL HISTORY

This case concerns 26 gang injunctions secured by Defendant City of Los Angeles ("City") containing unconstitutional curfew provisions. Even after a California Court of Appeal in *People ex rel. Totten v. Colonia Chiques*, 156 Cal. App. 4th 31 (2007), held that a nearly identical curfew provision was unconstitutionally vague, the City continued to serve and enforce injunctions containing that unconstitutional provision on more than 5,700 alleged gang members. It was not until *the day before the Defendants filed their Opposition* to Plaintiffs' Motion for Preliminary Injunction in 2012 that the City finally directed its officers not to detain or arrest anyone served with a gang injunction for violation of a curfew provision. Dkt. 77 at 4.

On June 20, 2009, named Plaintiffs Christian Rodriguez and Alberto Cazarez were arrested by Defendant Officer Gomez on suspicion of violating the curfew provision of the gang injunction and jailed pending arraignment. On February 7, 2011, Plaintiffs filed a complaint against the City of Los Angeles, City Attorney Carmen Trutanich, Chief of Police Charles Beck, Deputy City Attorney Alan Nadir, and Officer Angel Gomez challenging the constitutionality of the curfew provision in 26 gang injunctions in the City

of Los Angeles. Dkt. 1. Plaintiffs alleged the following claims arising from the service of the injunctions and enforcement of the curfew: violations of Plaintiffs' Due Process and First, Fourth, and Fourteenth Amendment rights, in violation of 42 U.S.C. § 1983; analogous claims under the California Constitution; violation of the Bane Act, Cal. Civ. Code §52.1; False Imprisonment; and Violation of Mandatory Duties.

The litigation was extremely hard fought at every turn. Plaintiffs filed motions for class certification and preliminary injunction on March 30, 2012, and July 6, 2012, respectively, and prevailed on each.[1] Defendants appealed the preliminary injunction to the Ninth Circuit. The appeal was fully briefed and argued, but ultimately dismissed as moot because Defendants had complied with the injunction. *Rodriguez v. City of Los Angeles*, 552 F. App'x. 723 (9th Cir. 2014).

The parties engaged in lengthy discovery proceedings. Plaintiffs took eleven depositions and defended six more. The parties propounded and responded to several rounds of written discovery. Plaintiffs filed and won a motion to compel discovery of records of all persons served and arrested pursuant to an unconstitutional curfew, and helped negotiate redactions to those documents to protect the privacy of class members following the successful intervention of the *Los Angeles Times*.

In October 2014, Defendants filed a motion to decertify the class, which the Court denied. Dkts. 185, 225. Defendants also filed three motions for summary judgment, and Plaintiffs filed their own motion for partial summary judgment. Dkts. 180, 181, 184, 187. On February 20, 2015, the Court granted Plaintiffs' motion for leave to file a Third Amended Complaint over Defendants' opposition, which Plaintiffs had brought at the Court's suggestion to clarify several claims. Dkt. 250.

On May 8, 2015, the Court granted summary judgment in favor of Plaintiffs as to the City's liability for its violation of class members' right to due process under the

[1] The Court certified a class of persons served with one or more of the 26 gang injunctions on February 15, 2013, but declined to certify the proposed sub-class of individuals who had been seized, arrested, jailed, and/or prosecuted for violation of the curfew provision of the injunction. Dkt. 89.

United States and California Constitutions. Dkt. 268 at 44-45. Defendants' motions were granted in part and denied in part. Dkt. 268 at 46. On September 25, 2015, Defendant Gomez filed a motion to dismiss the individual claims of the Estate of Alberto Cazarez,[2] but withdrew his motion after it had been fully briefed. Dkts. 339, 359, 360.

Following the Court's rulings on the parties' summary judgment motions, the class-wide issues remaining for trial were injunctive relief and damages against the City for federal due process violations; injunctive relief for state due process violations; liability and damages against the City for false imprisonment; liability, injunctive relief, and damages against Beck and Trutanich in their official capacities for federal due process violations; liability and damages against Beck and Trutanich in their individual capacities for federal due process violations; and liability and injunctive relief against Beck and Trutanich in their official capacities for state due process violations.[3]

Class Counsel evaluated the class-wide evidence of damages and determined that while a jury could award significant actual damages incurred by each class member due exclusively to the unconstitutional curfew provision, it could also determine that the damages to class members were only nominal (*e.g.*, one dollar per person). Dkt. 380-1; Stormer Decl. ¶ 149. In light of the extreme uncertainty surrounding a damages award from a jury, particularly given the perceived unpopularity of the class and the complications of damages awards to a class, Class Counsel concluded that the settlement on the terms set forth in the Settlement Agreement is in the best interest of the class. Stormer Decl. ¶ 150.

A. Settlement Agreement

After the Pretrial Conference and the Court's ruling on the parties' motions *in limine*, the parties renewed settlement talks. They engaged in protracted negotiations in numerous telephonic and in-person meetings, including 17 such meetings or phone conferences with the

[2] Mr. Cazarez died in an unrelated car accident in July 2014 and Plaintiffs substituted in the Estate of Alberto Cazarez in his place. Dkt. 166.

[3] Mr. Rodriguez has no individual claims remaining, while Mr. Cazarez has individual claims remaining for false imprisonment and violation of the Fourth Amendment.

Hon. Patrick J. Walsh. Dkt. 382 ¶ 2.

The Settlement Agreement consists of three substantive injunctive relief components plus indirect incentive payments to the named plaintiffs' daughters as structured educational funds. The Settlement Agreement also provides for attorney's fees and costs, administrative costs, and dissemination of Settlement Notice to the class.

The three injunctive relief components of the settlement agreement are: (a) a four-year Jobs and Education Program to which the City will contribute a minimum of $4.5 million and a maximum of $30 million, Dkt. No. 380-1 at 24, ¶ 35; (b) a tattoo removal program to which the City will contribute up to $150,000 each year for four years, *id.* at 25, ¶ 36; and (c) changes to gang injunction enforcement and an expedited gang injunction removal process involving federal court hearings, *id.* at 26, ¶¶ 38-40. Separate and apart from benefits provided to the class, the City will make incentive award payments of $20,000 to educational funds for each of the two toddler daughters of the named plaintiffs. *Id.* at 27, ¶ 41.

B. Preliminary Approval of Settlement

Plaintiffs filed an unopposed motion for preliminary approval of settlement on July 1, 2016. After a hearing, this Court approved the Settlement with high praise for the excellence of the result. This Court called the outcome of the case a "remarkable, creative and innovative settlement." Richardson Decl. ¶ 25, Exh. E at 4:3. Judge Walsh, who mediated the settlement, called the outcome "[t]he best settlement I've ever seen," and stated that the performance of all counsel involved was "one of the best [examples of] lawyering I've seen in 15 years on the job" and that the lawyers had done "a hell of a job on both sides." *Id.* at 6:12-15.

III. ARGUMENT

A. Plaintiffs Are Entitled to Fees Under State Law

California Code of Civil Procedure § 1021.5 provides for "private attorney general" fees (1) "to a successful party" (2) "in any action which has resulted in the enforcement of an important right affecting the public interest if" (3) "a significant benefit, whether

pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons," (4) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate," and (5) "such fees should not in the interest of justice be paid out of the recovery, if any." CAL. CODE CIV. PROC. 1021.5; *Adoption of Joshua S.*, 42 Cal. 4th 945, 952, n.2 (2008). Plaintiffs easily satisfy each of these requirements.

1. Plaintiffs Are the "Successful Party"

A party is "successful" under § 1021.5 if it achieves some relief from the benchmark conditions challenged in the lawsuit. *RiverWatch v. Cty. of San Diego Dept. of Envtl. Health*, 175 Cal. App. 4th 768, 783 (2009). "Successful party" status may be based upon a settlement or because the lawsuit was resolved on a preliminary issue obviating the adjudication of other issues. *Belth v. Garamendi*, 232 Cal. App. 3d 896, 901 (1991); *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 571-72 (2004). This is because "[t]he critical fact is the impact of the action, not the manner of its resolution." *See Folsom v. Butte Cty. Assn. of Gov'ts*, 32 Cal. 3d 668, 685-86 (1982) (party deemed "successful party" under § 1021.5 after obtaining the relief it sought in a settlement).

Here, Plaintiffs' central litigation aim was to curb the City's practice of serving and enforcing gang injunctions containing the unconstitutional curfew provision. On this issue, they gained complete success. The Court awarded summary judgment in Plaintiffs' favor as to claims that service of injunctions containing this provision violated Plaintiffs' due process rights under the federal and state constitutions. Plaintiffs subsequently entered into a negotiated settlement through which they obtained the City's agreement to cease all enforcement of the challenged provisions, the establishment of an expedited and independent process to remove individuals from the injunction, and additional remedies such as the Job and Education and Tattoo Removal programs which will provide important benefits compensating class members for the harms they have already endured.[4] Because

[4] In light of their complete success on the primary issues in this litigation, it is of no consequence that Defendants were awarded summary judgment in their favor as to certain other claims. *Wallace v. Consumers Coop. of Berkeley, Inc.*, 170 Cal. App. 3d 836, 846 (1985) ("[A] party need not prevail on every claim presented in an action in order to be

they achieved such success on the central issue in this litigation, Plaintiffs are a successful party under § 1021.5. *See Vasquez v. Rackauckas*, No. SACV09-1090 VBF(RNBx), 2011 U.S. Dist. LEXIS 83696, at *2 (C.D. Cal. July 28, 2011) (plaintiffs are a successful party under § 1021.5 where court issued a declaratory judgment that defendants violated plaintiffs' due process rights and enjoined defendants from enforcing a gang injunction).

2. This Case Resulted in the Enforcement of an Important Right Affecting the Public Interest

The vindication of a constitutional right constitutes "the enforcement of an important right affecting the public interest" under § 1021.5. *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 318 (1983); *Serrano v. Priest*, 20 Cal. 3d 25, 46 n.18 (1977). Because this action vindicated Plaintiffs' state and federal constitutional due process rights, on which Plaintiffs were granted summary judgment, it satisfies the first element of § 1021.5. *See Vasquez*, 2011 U.S. Dist. LEXIS 83696, at *3 (element satisfied by "enforce[ing] the right to procedural due process, among the most central protections against arbitrary government restriction of liberties"); *Coles v. City of Oakland*, No. C03-2961 TEH, 2007 U.S. Dist. LEXIS 100533, at *9 (N.D. Cal. Jan. 4, 2007) (element satisfied by vindicating the state and federal constitutional rights to free speech and assembly).

3. Plaintiffs Obtained a "[S]ignificant [B]enefit" Conferred on the Public or a Large Class of Persons

Similarly, the constitutional right to due process vindicated by this action constitutes a "significant benefit" conferred on the public that satisfies the third element under § 1021.5. *Press*, 34 Cal. 3d at 319 (holding element satisfied by vindication of constitutional rights because only by protecting each individual's constitutional rights "will society's general interests in these rights be secured"); *see also Vasquez*, 2011 U.S. Dist. LEXIS 83696, *3 ("[T]he litigation conferred a significant benefit on the public as a whole by protecting the right to due process."). And by vindicating the rights of more than 5,700 alleged gang members, this action satisfies the third element under § 1021.5 on the separate and independent ground that it affects a "large class of persons." *See*

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considered a successful party within the meaning of the section."); *RiverWatch*, 175 Cal. App. 4th at 782-83.

Monterey/Santa Cruz Cnty Bldg. & Constr. Council v. Cypress Marina Heights LP, 191 Cal. App. 4th 1500, 1523 (2011) ("[h]undreds of construction workers"); *Robinson v. City of Chowchilla*, 202 Cal. App. 4th 382, 396 n.4, 399 (2011) (1400 police chiefs).[5]

4. The Necessity and Financial Burden of Private Enforcement Make a Fee Award "Appropriate"

"[T]he necessity and financial burden requirement really examines two issues: whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys." *Conservatorship of Whitley*, 50 Cal. 4th 1206, 1214 (2010) (internal quotation marks omitted). Where, as here, a party files suit to defend itself against a governmental entity's unconstitutional injunction, the need for private enforcement is clear. *City of Fresno v. Press Commc'ns, Inc.*, 31 Cal. App. 4th 32, 44 (1994) ("It became necessary for appellants to litigate this matter because the city brought an action to enjoin claimed violations of the ordinance. Appellants were compelled to assert their First Amendment rights in order to defend their right to engage in protected activity."); *see also Woodland Hills Residents Ass'n, Inc. v. City Council*, 23 Cal. 3d 917, 941 (1979) (holding private enforcement necessary in lawsuit against governmental entities responsible for the unlawful practice).

Courts analyze the second issue through a two-step process comparing the estimated value of the case to its actual litigation costs. *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1414-15 (1991), disapproved on other grounds in *Olson v. Automobile Club of S. Cal.*, 42 Cal. 4th 1142, 1153 n.6 (2008). The estimated value must be discounted to account for the probability of success at the time the vital litigation decisions were considered. *Id.* at 1414. Fee awards are denied only where the estimated value of the case "exceeds by a *substantial margin* the actual litigation costs" *and* the public benefits of the

[5] It is of no consequence that this action further enforced the right declared in *Colonia Chiques*. *See Press*, 34 Cal. 3d at 318 (rejecting defendant's contention that an action merely enforcing a previous landmark decision did not confer a significant benefit on the public or a large class of persons, because "the declaration of rights in 'landmark' cases would have little meaning if those rights could not be 'enforced' in subsequent litigation"); *City of Los Angeles v. 2000 Jeep Cherokee*, 159 Cal. App. 4th 1272, 1280 (2008) ("Because Reinsdorf's lawsuit forced the City to abandon its ordinance and comply with state law, the public interest was served—and no more was required.").

case are not "very significant." *Id.* at 1415 (italics in original). *See id.* at 1416-17 (holding that case's estimated value, which exceeded actual costs by a factor of 1.9 ($2,613,808 to $1,391,742), did not "exceed[] by a *substantial margin* the actual costs" in light of the "very significant public benefit" provided by the case).

Plaintiffs satisfy this requirement because the value of this case does not exceed its actual costs by a substantial margin, *and* this action's public benefits are extremely significant. In this action, while Plaintiffs alleged claims for damages, Counsel estimated their likelihood of actually recovering significant money damages at between 5% and an upper, highly optimistic limit of 20%. Stormer Decl. ¶ 98. These figures take into account the low probability that the City would agree to pay, or that a jury would award, substantial damages to gang members given their perceived unpopularity; the difficulty of the case law on the Bane Act; and the City Defendant's demonstrated willingness to commit substantial litigation resources to vigorously contest this action. Accordingly, the estimated value of this case at the time the critical litigation decisions were considered was between $400,000 and $2,400,000 at the most.[6] These modest figures clearly do not exceed Plaintiffs' actual litigation costs of $5,017,216.40 inclusive of fees and costs,[7] and certainly not "by a substantial margin." As previously noted, moreover, the public benefit in this case is *extremely* significant. By providing a jobs program to assist thousands of alleged gang members in acquiring or maintaining gainful employment and in participating in society (thereby mitigating the social ills including crime and violence resulting from gang activity), Dkt. No. 380-1 (describing settlement); Dkt. No. 273-1 at 81, 261 (discussing relationship between employment and gang membership); Richardson

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[6] At the outset of this litigation, Counsel understood the class as consisting of at least 300 individuals and likely between 2,000 and 3,000. Orange Dec. ¶ 19. Counsel also understood that money damages would be exceptionally difficult to obtain. Stormer Decl. ¶ 98; Orange Dec. ¶¶ 28, 31. On the highly optimistic assumptions that the class totaled 3,000 members and all would be entitled to statutory damages of $4,000 under the Bane Act, total damages would reach $12,000,000. Five percent of $12,000,000 is $600,000, and twenty percent is $2,400,000. A class of 2,000 would yield an estimated value ranging between $400,000 and $1,600,000.

[7] The "costs of litigation" include fees and costs. *Conservatorship of Whitley*, 50 Cal. 4th at 1215-16. Although Plaintiffs seek a multiplier, it is not included in this figure. *Beasely*, 235 Cal. App. 3d at 1416.

Decl. ¶ 24(d) (quoting Judge Walsh's statement that this settlement "could be a big sea change in the world starting with Los Angeles where rather than lock these folks up and have injunctions against them, you invest $30 million."); a model for other anti-gang programs, Orange Decl. ¶ 57; and a deterrent against unconstitutional conduct by other municipalities, Stormer Decl. ¶ 162, the public benefit here far exceeds the benefit at issue in *Beasley*, which concerned only the recovery of excessive credit card fees ranging from $3 to $10. *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1383, 1390 (1991).

5. In the Interests of the Judgment, the Fee Should Not, and Cannot, Be Paid out of the Recovery

The fifth and final factor applies only where there has been a financial recovery. *Lyons v. Chinese Hosp. Ass'n*, 136 Cal. App. 4th 1331, 1355 (2006). Because Plaintiffs obtained only injunctive relief and no financial recovery, this factor provides no basis for denying Plaintiffs their reasonable fees under § 1021.5. Plaintiffs satisfy every element under CCP § 1021.5, and accordingly are entitled to fees under this statute.

B. Plaintiffs Are Entitled to Fees Under Federal Law

Plaintiffs are also a prevailing party entitled to their reasonable fees under federal law. 42 U.S.C. § 1988 provides that the "prevailing party" in a suit under § 1983 may be entitled to "a reasonable attorney's fee." 42 U.S.C. § 1988(a); *Klein v. City of Laguna Beach*, 810 F.3d 693, 698 (9th Cir. 2016). As the Supreme Court explained, "[u]nder our generous formulation of the term, plaintiffs may be considered 'prevailing parties' [under § 1988] for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Farrar v. Hobby*, 506 U.S. 103, 109 (1992) (internal citations and quotation marks omitted). Success may come through either "an enforceable judgment" or "comparable relief through . . . settlement." *Id.* at 111. The "prevailing party" standard under § 1988 and the "successful party" standard under § 1021.5 are synonymous. *Urbaniak v. Newton*, 19 Cal. App. 4th 1837, 1843 n.4 (1993); *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 570 (2004). Accordingly, the same analysis establishing Plaintiffs as a successful party under § 1021.5 establishes them as a prevailing party under § 1988.

C. The Fees Sought Are Reasonable

To calculate the amount of a reasonable fee under either federal or state law, courts start with "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). This is known as the "lodestar." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). The lodestar analysis is the same under federal and state law. *Rodriguez v. Cnty. of L.A.*, 96 F. Supp. 3d 1012, 1017 (C.D. Cal. 2014); *Asberry v. City of Sacramento/Sanitation Dep't*, 2004 U.S. Dist. LEXIS 29138, at *14-15 (E.D. Cal. Apr. 5, 2004). Employing this methodology, Plaintiffs seek a baseline lodestar fee of $4,940,962.25.

1. Plaintiffs' hours are reasonable

"Ultimately, a 'reasonable' number of hours equals 'the number of hours which could reasonably have been billed to a private client.'" *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) (internal modifications omitted). Fees are recoverable for *all* hours reasonably spent. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982); *Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010). To determine the reasonable number of hours, courts review the attorneys' billing records. *Gonzalez*, 729 F.3d at 1202.[8]

a. Underlying Litigation

As more fully set forth in Plaintiffs' supporting declarations, Counsel's contemporaneous billing records reflect that they spent 7,944.4 hours litigating this case (1620.7 hours by Public Counsel, 3,980.5 hours by HSR, and 2,343.2 hours by Orange Law Offices). Stormer ¶ 105, 155, Exh. B; Orange Dec. ¶ 41, 44, Exh. A; Richardson Decl. ¶ 13, Exhs. B, C. Plaintiffs estimate that they will spend an additional 195 hours drafting papers, deposing objectors, and preparing for argument for the Final Fairness

[8] California law is actually less demanding in this respect, and does not require contemporaneous time records; attorney declarations identifying the work performed, rates, and total fees incurred are sufficient to establish the *prima facie* reasonableness of the lodestar requested. *See Montano v. Bonnie Brae Convalescent Hosp., Inc.*, No. 12-3462 FMO (AGRx), 2015 U.S. Dist. LEXIS 122329, *10 (C.D. Cal. Sept. 14, 2015). Because Plaintiffs proceed under both federal and state fee shifting law, however, they proffer contemporaneous billing records in support of both fee shifting statutes.

Hearing on December 2, 2016, and will submit supplemental records and supporting declarations with their Reply brief. Stormer Decl. ¶ 134; Orange Decl. ¶ 49; Richardson Decl. ¶¶ 26-27. Plaintiffs' time, prior to adjustments, thus total 8,139.4 hours.

Where, as here, Plaintiffs obtained excellent results, the "attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation . . . ." *Hensley*, 461 U.S. at 435; *accord Feminist Women's Health Ctr. v. Blythe*, 32 Cal. App. 4th 1641, 1674 n.8 (1995). Further underscoring the reasonableness of the number of hours expended is that fact that Plaintiffs' counsel are civil rights attorneys who, for many of their cases, depend on contingency fees and attorney fee awards in particular to obtain any fees at all. Stormer Decl. ¶ 108, 158; Richardson Decl. ¶ 6; Orange Decl. ¶ 39. As the Ninth Circuit has noted,

> lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.

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

Nonetheless, in order to eliminate compensation for hours that are "excessive, redundant, or otherwise unnecessary," *Gonzalez*, 729 F.3d at 1203; *see also Syers Properties III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 700 (2014) (noting exercise of billing judgment), Plaintiffs have exercised billing judgment by not requesting time spent by attorneys who spent less than 10 hours on the case and deleting other items individually. Stormer Dec. ¶ 133; Orange Dec. ¶¶ 42-43, 45; Richardson Decl. ¶ 25. In addition to such billing judgment, Plaintiffs also took a 5% across-the-board cut. Richardson Decl. ¶ 25; Stormer Decl. ¶ 133; Orange Decl. ¶ 44 (Chart 1), ¶ 47.[9] *See AF Holdings LLC v. Navasca*, No. C-12-2396 EMC, 2013 U.S. Dist. LEXIS 102249, at *15

[9] In addition to these reductions, Hadsell Stormer & Renick is requesting no fees for work performed during its initial two months on this case because contemporaneous time records were not maintained during this brief period. Stormer Decl. ¶ X.

(N.D. Cal., July 22, 2013); *Hernandez v. Grullense*, No. 12-CV-03257-WHO, 2014 U.S. Dist. LEXIS 61020, at *51 (N.D. Cal., Apr. 30, 2014) (each approving 5% cuts). Plaintiffs acknowledge that the fee application—which covers work on a class action over five years involving three firms and 17 lawyers—is "massive" and that it would be difficult if not impossible to extract any unnecessarily duplicative work. Stormer Decl. ¶ 105; Richardson Decl. ¶ 13; Orange Decl. ¶ 44. *See Moreno*, 534 F.3d at 1112 ("One certainly expects some degree of duplication as an inherent part of the process. There is no reason why the lawyer should perform this necessary work for free.")

b. Fee Motion

It is "well-established that time spent in preparing fee applications under 42 U.S.C. § 1988 is compensable." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1210 (9th Cir. 2013); *see also Serrano v. Unruh*, 32 Cal. 3d 621, 635 (1982). In preparation of this fee motion, Plaintiffs have spent a total of 78.1 hours by Public Counsel, 83.5 hours by HSR, and 31.8 hours by Orange Law Offices as of October 11, 2016, for a total of 193.4 hours. At their current billing rates, the total fees sought for this fee motion are $43,417.50 for Public Counsel, $45,242.50 by HSR, and $24,327.00 by Orange Law Offices, for a total of $112,987.00. Richardson Dec. ¶ 26, Exhs. B, C; Stormer Decl. ¶¶ 164, 166, Exh. B; Orange Decl. ¶ 45, Exh. A.

c. Post-Settlement Enforcement

Under Ninth Circuit law, "a party that prevails by obtaining a consent decree [or settlement agreement] may recover attorneys' fees under [42 U.S.C.] § 1988 for monitoring compliance with the decree, even when such monitoring does not result in any judicially sanctioned relief." *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 451 (9th Cir. 2010). This Court has jurisdiction to hear a motion for such attorney's fees after they are incurred under the Settlement Agreement ¶ 70, which provides that the Court retains jurisdiction over "implementation and enforcement of the terms" of the

agreement.[10] Courts regularly award fees for monitoring of settlement agreements. *See, e.g.*, *Catholic Social Services, Inc. v. Napolitano*, 837 F.Supp.2d 1059, 1067 (N.D. Cal. 2011) (where a settlement agreement required the defendants "to engage in ongoing future activities to comply with the settlement agreement," this "by necessity meant that both the parties and this court contemplated further activities by the plaintiffs in monitoring the defendants' activities . . . .").

Plaintiffs anticipate that, should the settlement be approved by the Court, they will engage in substantive settlement monitoring and enforcement activities, including but not limited to the following: (1) fielding class member queries and addressing complaints; (2) reviewing and responding to audit of Jobs and Education Program, under Settlement Agreement, Exh. B at 6; (3) selecting recipients of excess funds under Settlement ¶ 35(d), if applicable; (4) coordinating pro bono counsel to represent class members in removal hearings under Settlement ¶ 40. Stormer Decl. ¶ 157; Richardson Decl. ¶ 28. The time involved in all of these enforcement activities will depend almost entirely on the response from class members, making it difficult for Plaintiffs to estimate their projected attorney's fees for such activities in advance. Stormer Decl. ¶ 157; Orange Dec. ¶¶ 50-51; Richardson Decl. ¶ 28.

2. Plaintiffs' Rates are Reasonable

"To determine a 'reasonable hourly rate'" under federal law, "the district court should consider: 'expertise, reputation, and ability of the attorney; the outcome of the results of the proceedings; the customary fees; and the novelty or the difficulty of the question presented." *Hiken v. Dep't of Defense*, Case No. 13-17073, slip op. at 14, 2016 U.S. App. LEXIS 16359 (9th Cir. Sept. 6, 2016) (quoting *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986)). The requested rates must be "in line with those prevailing in the community," which may be shown through "affidavits of the

[10] In fact, a Court has jurisdiction over such motions separate and apart from its jurisdiction over the Settlement Agreement. *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 970 (9th Cir. 2014) (holding that a district court had ancillary jurisdiction over plaintiffs' motion for attorney's fees almost two years after the court's jurisdiction to enforce the settlement had expired.)

plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases." *Hiken*, slip op. at 14-15. The state law rule considers a slightly narrower set of criteria, and pegs a reasonable hourly rate to the reasonable market value of the attorney's services, meaning the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001). This amount may be based on "the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work." *Children's Hosp. & Med. Ctr. v. Bontá*, 97 Cal. App. 4th 740, 783 (2002).

Here, the reasonableness of counsel's requested rates is amply supported by the detailed information in the accompanying declarations concerning the expertise, reputation, and abilities of the attorneys involved in this case, and the rates obtained by comparable attorneys in the market and through judicial awards. Richardson Decl. ¶¶ 2-5, 9-12, 14-18; Stormer Decl. ¶¶ 2-95, 104, 105-132; Orange Decl. ¶¶ 2-16; *see generally* Litt Decl.; Sobel Decl.; Rhode Decl.; Hake Decl. Plaintiffs request fees based on each attorney's current rates to account for the substantial delay in payment resulting from the five years required to litigate this case. *Perdue v. Kenny A.*, 559 U.S. 542, 556 (2010) (permitting this adjustment); *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 583-84 (2004) (same). Further supporting the reasonableness of counsel's rates under federal law is the quality of the outcome achieved in this case.[11]

D. Adjustment of the Lodestar

After determining the lodestar, the court has the discretion to "adjust the fee upward

[11] In the Ninth Circuit, "the complexity of legal work affects the determination of the reasonable rate" under § 1988. *Gonzalez*, 729 F.3d at 1207. This case is a class action that "required considerable skill to litigate," *Davis v. City & Cty. of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992), *opinion vacated in part on unrelated grounds on denial of reh'g*, 984 F.2d 345 (9th Cir. 1993). It involved multiple complex and novel questions of constitutional due process, class action certification, federal jurisdiction and abstention, classwide damages, presumed damages, application of the Bane Act, multiple expert reports and depositions, and other issues, as is clear in the motion practice which involved not only a successful motion for class certification but a motion by the City to decertify the class, along with an interlocutory appeal to the Ninth Circuit. Because this factor supports a multiplier under state law, Plaintiffs address it in that section. To the extent that the Court declines to award a state law multiplier on this basis, however, it may properly consider this factor when determining the reasonableness of Counsel's rates under § 1988.

or downward, including the important factor of the 'results obtained.'" *Hensley*, 461 U.S. at 434; *see also Ketchum*, 24 Cal. 4th at 1136-38. No downward adjustment is appropriate here; rather, Plaintiffs are entitled to an upward multiplier.

1. No Downward Adjustment Is Appropriate

The fact that Plaintiffs did not prevail on every claim alleged in this case provides no basis for a downward adjustment to counsel's lodestar. "Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised." *Hensley*, 461 U.S. at 440; *Greene v. Dillingham Constr. N.A., Inc.*, 101 Cal.App.4th 418, 423 (2002) ("Attorneys generally must pursue all available legal avenues and theories in pursuit of their clients' objectives; it is impossible, as a practical matter, for an attorney to know in advance whether or not his or her work on a potentially meritorious legal theory will ultimately prevail."). State law in particular strongly disfavors lodestar reductions under § 1021.5 on this ground. *Ketchum*, 24 Cal. 4th at 1133 (§ 1021.5 fee awards should generally be fully compensatory); *see also Ctr. for Biological Diversity v. Cnty. of San Bernardino*, 185 Cal. App. 4th 866, 898 (2010) (reducing fees based on partial success "would impeded the Legislature's intent" behind § 1021.5); *Sundance v. Mun. Ct.*, 192 Cal. App. 3d 268, 273 (1987) ("To reduce the attorneys' fees of a successful party [under § 1021.5] because he did not prevail on all his arguments, makes it the attorney, and not the defendant, who pays the costs of enforcing that public right.").

a. The claims on which Plaintiffs did not prevail are related to the claims on which they did prevail

Under federal law, "in a lawsuit where the plaintiff presents different claims for relief that 'involve a common core of facts' or are based on related legal theories,' the district court should not attempt to divide the request for attorney's fees on a claim-by-claim basis." *McCown v. City of Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2008). The test for whether claims are factually related is "whether relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted was premised."

Id. (quoting *Schwarz v. Secretary of Health and Human Services*, 73, F.3d 895, 903 (9th Cir. 1995). Under state law, courts similarly focus on whether the plaintiff has obtained the relief sought, and have discretion to compensate plaintiffs for reasonably incurred time spent on unsuccessful legal theories. *Envtl. Protection Info. Ctr. v. Dep't of Forestry & Fire Prot.*, 190 Cal. App. 4th 217, 240 (2010). And under both federal and state law, a court should not attempt to exclude hours spent on the unsuccessful claim where it is not reasonably possible to isolate them, even where an unsuccessful claim is unrelated to the successful claims. *Hensley*, 251 U.S. at 435; *Greene v. Dillingham Constr. N.A., Inc.*, 101 Cal. App. 4th 418, 423 (2002).

Here, the claims on which the Plaintiffs did not prevail derive from the identical course of conduct as the claims on which they did. First, Plaintiffs did not prevail on their class Bane Act claims against the City, Nadir, and Gomez. But the class Bane Act claims involved the same course of conduct by the Defendants as the constitutional claims on which Plaintiffs were successful, namely, the Defendants' violation of class members' constitutional rights by serving and enforcing injunctions containing an unconstitutionally vague curfew provision. All discovery and depositions on the successful constitutional claims were equally applicable to the Bane Act claims, and vice versa. The legal theory may have been different, but the facts were the same. *See Thorne v. City of El Segundo*, 802 F.2d 1131, 1142 (9th Cir. 1986); *Wysinger v. Auto. Club of S. Cal.*, 157 Cal. App. 4th 413, 431 (2007) (each stating that courts need not reduce the lodestar where unsuccessful claims are factually related to successful claims).

The class was also unsuccessful in its constitutional claims against Gomez and Nadir for violation of due process. But those claims involved the same legal theory and course of conduct as the successful constitutional claims against the City, Beck, and Trutanich, namely that the Defendants engaged in a policy and practice of unlawful service, use, and enforcement of unconstitutionally vague curfew provisions in gang injunctions. *See Pierce v. County of Orange*, 905 F.Supp.2d 1017, 1041 (C.D. Cal. 2012) (claims were clearly related when they "arose in the same factual context of the Orange

County jail system, challenged related policies, procedures, customs, and training implemented by the County, and implicated the same" issues); *Envtl. Prot. Info. Ctr.*, 190 Cal. App. 4th at 247 ("[T]he relief EPIC sought on the unsuccessful claims did not seek to remedy a course of conduct entirely distinct and separate from the course of conduct underlying its successful claims.").

Furthermore, the individual claims on which Plaintiffs did not prevail are related to the claims on which they did. All of the individual claims of Mr. Rodriguez and Mr. Cazarez against the City and Gomez derive from an identical set of facts, namely, their arrest by Officer Gomez on the night of June 20, 2009. *McCown v. City of Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2008) (claims related where they all "arose from a common core of facts, namely [the plaintiff's] arrest on June 2, 2004"); *Chavez v. City of L.A.*, 47 Cal. 4th 970, 989 (2010) (framing issue as whether claims are "factually related and closely intertwined"). That night, Mr. Rodriguez and Mr. Cazarez were walking home together through the baseball fields when Officer Gomez stopped and arrested them. The two were placed in a squad car for thirty to forty minutes. Mr. Cazarez was ultimately released and cited for violating the juvenile curfew, and Mr. Rodriguez was jailed and criminally prosecuted for violating the curfew provision. Mr. Rodriguez did not prevail in his individual claim for false imprisonment against the City and Officer Gomez, but the Estate of Mr. Cazarez was prepared to bring the same claims against the City and Officer Gomez at trial. The core of facts underlying these claims was identical, and the work on Mr. Rodriguez's unsuccessful claims was inextricably intertwined with the work on Mr. Cazarez's successful claims. "[E]vidence that was material to one claim was material to the other." *Thorne*, 802 F.2d at 1142.

Mr. Cazarez's individual false imprisonment claim against Nadir was related to the class's successful claims against the City for false imprisonment, as both are based on the legal theory that serving an injunction with an unconstitutional curfew provision constituted a threat of arrest that compelled the individual served to stay inside, involuntarily. Moreover, because Nadir was responsible for authorizing the service of

three gang injunctions containing the unconstitutional curfew provision, and for training officers in such service, he was part of the City's course of conduct. Thus, Plaintiffs' work on the claims against Nadir "could have contributed to the final result achieved." *Webb v. Sloan*, 330 F.3d 1158, 1169 (9th Cir. 2003).

In any event, even if the individual claims against Nadir were not related to claims on which Plaintiffs prevailed, Nadir and his actions were deeply intertwined in the other issues of the case, and, he would have been deposed as a witness even if had not been a defendant. "Work performed in pursuit of the unrelated claims may be inseparable from that performed in furtherance of the related or successful claims." *Thomas v. City of Tacoma*, 410 F.3d 644 (9th Cir. 2005). Finally, any time on unsuccessful claims that could potentially be separated from the successful claims is more than adequately covered by the 5% across-the-board cut. Richardson Decl. ¶ 25; Orange Decl. ¶ 47; Stormer Decl. ¶ 133.

b. Excellent results

Under federal law, a party that obtains "exceptional results" is entitled to a fully compensatory fee. *Hensley*, 461 U.S. at 435. Courts analyzing this issue "should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 435. "Success is measured not only by the amount of the recovery but also in terms of the significance of the legal issue on which the plaintiff prevailed and the public purpose the litigation served." *Morales v. City of San Rafael*, 96 F.3d 359, 365 (9th Cir. 1996).

Here, Plaintiffs have achieved an excellent result by any measure. They have obtained classwide relief in the form of the jobs and education program, valued between $4.5 and $30 million dollars; an expedited process to apply to be removed from the gang injunction; tattoo removal services; and injunctive relief in the form of an agreement by the City not to enforce four provisions with the gang injunctions including the curfew provision and not to serve any of the 26 gang injunctions without required notice. In addition, named Plaintiffs are receiving an incentive award in the form of an annuity of $20,000 for the education of each of their daughters. Dkt. No. 380-1.

Through their five years of sustained legal effort, Plaintiffs have accomplished their mission of requiring the City to cease its service and enforcement of the unconstitutional gang injunctions and obtaining the common good of job-related remedies for thousands of alleged gang members whose rights had been violated. *See Sorenson v. Mink*, 239 F.3d 1140, 1147 (9th Cir. 2001) (plaintiffs' action "represents eight years of sustained legal effort to bring about a common good, namely, the improvement of the disability determination system in Oregon," and in "accomplish[ing]" that mission they achieved an "excellent result."). Plaintiffs' counsel here could have pursued the much easier path of filing a class action for injunctive relief only. They did not. Instead, they pursued damages for the entire class. The remedy they ultimately obtained is valuable both in terms of the benefits conferred to class members and those accruing to society as a whole. The settlement "constitutes a warning to [the defendants] not to treat civilians unconstitutionally," *Morales*, 96 F.3d at 365. It also benefits the public by increasing access to jobs and education for a vulnerable population of allegedly gang-involved individuals and increasing their opportunities to enter the workforce and improve their earning potential.

The excellence of the results obtained has been confirmed by the Court. Judge Walsh, who mediated the discussions that led to the settlement, called the settlement "the best settlement [he has] ever seen." Richardson Decl. ¶ 24(a), and this Court called the settlement "remarkable, creative, and innovative," *id.* Exh. E at 4:3. Members of the legal community have also commented positively on the results achieved. Litt Decl. ¶ 44; Rohde Decl. ¶ 6; Hake Decl. ¶ 9.

Here, the high "level of success" obtained by the Plaintiffs amply justifies the hours expended, including the time spent on claims on which Plaintiffs did not prevail. *See Hensley*, 461 U.S. at 434 (stating that the "important factor of the 'results obtained'" is "particularly crucial" in cases where plaintiffs did not succeed on all of their claims); *see also Rivera v. City of Riverside*, 763 F.2d 1580 (9th Cir.1985), aff'd on other grounds, 477 U.S. 561 (1986) (approving the district court's refusal to reduce the attorney's fee award

for limited success, despite the plaintiffs' failure to prevail against the majority of the original defendants).

2. Plaintiffs Are Entitled to a Multiplier Under State Law

Plaintiffs are entitled to a significant multiplier in this case under state law. *See Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478-79 (9th Cir. 1995); *Rodriguez*, 96 F. Supp. 3d at 1017-18. When determining whether to award a multiplier and in what amount, courts consider factors including "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." *Ketchum v. Moses*, 24 Cal. 4th at 1132. While any one of these factors may be sufficient to support a multiplier, *Cates v. Chiang*, 213 Cal. App. 4th 791, 822 (2013), Plaintiffs satisfy *every Ketchum* factor and several more, justifying a 2.0 multiplier.[12]

a. The Novelty and Difficulty of the Questions Involved

This case raised numerous novel and difficult legal issues, including abstention and presumed damages. Richardson Decl. ¶¶ 8-10. The complexity of the case intensified further at the settlement stage, where counsel confronted the novel challenge of crafting a settlement that would deliver meaningful injunctive relief for class members while at the same time remaining politically palatable to the elected officials who must ultimately approve it. Orange Dec. ¶¶ 27-29. Accordingly, this factor weighs in favor of a multiplier.

b. Counsel's Skill and the Results Achieved

Counsel's skill and the quality of representation, reflected in the results achieved, also weigh strongly in favor of a multiplier in this case. *Ketchum*, 24 Cal. 4th at 1132 ("In effect, the court determines, retrospectively, whether the litigation . . . required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services."); *see also Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 61 (2008) (affirming 2.5 multiplier based in part on the "quality of

[12] Plaintiffs do not seek a multiplier for fees incurred in the preparation of this fee motion.

representation"). In evaluating this factor, courts may consider the exceptional skill demonstrated by counsel, as reflected in the quality of the results obtained. *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 838 (2001) ("The 'results obtained' factor can properly be used to enhance a lodestar calculation where an exceptional effort produced an exceptional benefit."); *Flannery v. Prentice*, 26 Cal. 4th 572, 584 (2001); *Leuzinger v. Cty. of Lake*, No. C 06-00398 SBA, 2009 U.S. Dist. LEXIS 29843, at *28 (N.D. Cal. Mar. 27, 2009); *see also Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 582 (2004) (awarding 2.25 multiplier for results producing an "exceptional benefit" to consumers).[13]

As previously noted, the Court has recognized the exceptional skill with which Counsel litigated this action and the exceptional result they obtained. In evaluating the outcome of this case, moreover, it is important to recognize not simply the benefits to the class members arising from the vindication of their constitutional rights and the provision job-related benefits, and the resulting benefit to society, but also its deterrent effect on similar unconstitutional practices by other municipalities. Stormer Decl. ¶ 162. *See A.D. v. State Highway Patrol*, No. C 07-5483 SI, 2013 U.S. Dist. LEXIS 169275, at *13 (N.D. Cal. Nov. 27, 2013) (awarding multiplier based in part upon the deterrent effect of the verdict on future constitutional violations); *Chabner v. United of Omaha Life Ins. Co.*, No. C-95-0447 MHP, 1999 U.S. Dist. LEXIS 16552, at *19 (N.D. Cal. Oct. 12, 1999) (court's decision broadly changes industry practices).

c. Preclusion of Other Employment

Further justifying a multiplier is the fact that litigating this case consumed an enormous amount of legal resources which forced counsel to decline other meritorious cases. Counsel collectively expended more than 8,100 hours on this action, the lion's share

[13] This factor is not double counted. The excellence of the results achieved is argued in support of the reasonableness of the lodestar under federal law only. *See supra* § III.D.1.b. Nor is the exceptional level of skill with which this case was litigated subsumed within the hourly rates included in the lodestar under state law. *Ketchum*, 24 Cal. 4th at 1139 (awarding a multiplier based on counsel's skill does not constitute double counting where "the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation"); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1217 (2008); *Chavez*, 162 Cal. App. 4th at 61.

of which (79%) was provided by a solo practitioner (Orange Law Offices) and small firm (HSR) averaging just 11 lawyers over the course of this litigation. Stormer Decl. ¶ 160. As detailed in the declarations of Mr. Stormer and Mr. Orange, litigating this action consumed considerable resources—4,040.5 hours and 2,388.2 hours, respectively— that precluded counsel from accepting certain cases they would otherwise have taken on. Stormer Decl. ¶¶ 105, 134, 160; Orange Dec. ¶¶ 39-40, 44, 49. *See Amaral*, 163 Cal. App. 4th at 1218 (awarding multiplier based in part on counsel's "declaration stating that the case had 'consumed well over 2,100 hours of professional time, which in a small firm such as [theirs] comprises a significant amount of billing.'").

d. Contingent Nature of the Fee Award

"One of the most common fee enhancers . . . is for contingency risk." *Graham*, 34 Cal. 4th at 579; *Amaral*, 163 Cal. App. 4th at 1217. As the California Supreme Court explained,

> The purpose of a fee enhancement or so-called multiplier for contingent risk is to bring the financial incentives for attorneys enforcing important constitutional rights into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis. 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Ketchum, 24 Cal. 4th at 1132-33; *see also Beasley*, 235 Cal. App. 4th at 1419 (primary purpose of risk enhancements is "to compensate for the *risk* of loss generally in contingency cases *as a class*") (emphasis in original). Such risks are elevated in cases like this, in which Plaintiffs bear the "double-contingency" of proving both liability and violation of a specific fee-shifting statute. *Bender v. Cnty. of L.A.*, 217 Cal. App. 4th 968, 988 (2013).

Because counsel accepted this case on a pure contingency basis, this factor weighs heavily in favor of a substantial multiplier. Plaintiffs did not agree to pay any portion of the fee regardless of the outcome, and counsel advanced all litigation costs and expenses. Moreover, as noted, counsel expended more than 8,100 hours on this action, which constituted a significant burden given the small size of the organizations involved.

Further elevating the risk of nonpayment is the fact that Plaintiffs are perceived to be highly unsympathetic. As one court explained in granting a multiplier under the far more restrictive federal standard,

> In some civil rights cases, primarily those involving . . . unattractive plaintiffs, . . . it is extremely difficult for the plaintiff to prevail, and virtually impossible to obtain a recovery large enough to support a reasonable fee. This is so regardless of the merits of the claim, or the skill, experience or diligence of counsel. . . . Jurors have no desire to believe criminals, or to reward them even if the jurors chance to believe their stories. . . . Often there is virtually nothing a lawyer can do through the application of skill, experience or time to change the jurors' preconceptions of relative credibility.

Gomez v. Gates, 804 F. Supp. 69, 75-76 (C.D. Cal. 1992); *see also Rodriguez*, 96 F.Supp.3d at 1025 (awarding multiplier because "Counsel faced substantial obstacles to success, including representing Plaintiffs that were routinely described as the 'worst of the worst'"). Success was highly uncertain notwithstanding the *Colonia Chiques* decision; counsel understood that damages would be extremely difficult to obtain, Stormer Decl. ¶ 98; Orange Decl. ¶¶ 28, 31, and anticipated that Defendants would raise *Los Angeles v. Lyons* as a defense to injunctive relief. Orange Decl. ¶ 25. Given the enormous challenges facing this case, including the unpopularity of the class members, it is unsurprising that at least a dozen civil rights firms and multiple so-called "Big Law" firms declined to co-counsel this case. Orange Decl.¶¶ 20, 34.

It thus bears repeating that this action sought to vindicate the constitutional rights of more than 5,700 alleged gang members, who are widely regarded as highly unsympathetic, no matter what their individual situations. Orange Decl. ¶ 38; *see United States v. Irvin*, 87 F.3d 860, 865-66 (7th Cir. 1996) ("Gangs generally arouse negative connotations and often invoke images of criminal activity and deviant behavior.").[14] Moreover, numerous civil rights attorneys declined to take this case, further justifying a multiplier. Orange Decl. ¶¶

[14] As detailed in the declaration of Olu Orange, the public opprobrium counsel faced for representing unpopular clients further weighs in favor of a multiplier here, because such enhancements help ensure that unattractive clients receive representation by quality counsel. *See Jaramillo v. Cnty. of Orange*, 200 Cal. App. 4th 811, 830 (2011) (affirming multiplier based in part on the "degree of public opprobrium" counsel faced for representing a deeply unpopular client). Mr. Orange was ridiculed by other attorneys targeted by numerous angry and occasionally racist callers berating him for accepting this case. *See* Orange Dec. ¶ 34-35 and Exhs. C, D (transcript and audio recording of hateful call).

20, 34. This fact greatly increases the risk of no recovery, and consequently the size of the multiplier necessary to offset this risk.[15]

For all of these reasons, Plaintiffs respectfully request that this court award a multiplier of 2.0, an amount well within this court's discretion to approve. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th, 224 255 (2001) (multipliers can range from 2 to 4 or even higher); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (class action; 2.52 multiplier); *Chavez*, 162 Cal. App. 4th at 66 (class action; 2.5 multiplier); *City of Oakland*, 203 Cal. App. 3d 78 (2.34 multiplier); *Leuzinger*, 2009 U.S. Dist. LEXIS 29843, at *31 (2.0 multiplier); *Crommie v. Pub. Utils. Comm'n*, 840 F. Supp. 719, 726 (N.D. Cal. 1994) (same); *Fadhl v. San Francisco*, 859 F.2d 649, 651 (9th Cir. 1988) (same); *Chabner v. United of Omaha Life Ins. Co.*, No. C-95-0447 MHP, 1999 U.S. Dist. Lexis 16552 (N.D. Cal. Oct. 12, 1999) (same); *Rodriguez*, 96 F.Supp.3d at 1025 (same). Applying a 2.0 multiplier to Plaintiffs' fees, exclusive of fees incurred from the fee motion itself and estimated fees from future work, produces fees of $4,720,851.32 for HSR, $1,721,207.24 for Public Counsel, and $3,207,703.94 for Orange Law Offices, totaling $9,649,762.50.

3. Plaintiffs Are Entitled to Multiplier Under Federal Law

Plaintiffs are also entitled to a multiplier under federal law. Federal multipliers, though less common than state law multipliers, are appropriate in limited circumstances such as the "extreme undesirability of the case" and the unwillingness of other attorneys

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[15] Although Plaintiffs do not ask this Court to double count factors as supporting both the requested lodestar and the multiplier, two factors Plaintiffs discuss *supra* as supporting the requested lodestar would further support a multiplier should the Court decline to include them in the lodestar. The first factor is Counsel's continuing obligations to the class members beyond the date of settlement further.. *See Thayer*, 92 Cal. App. 4th at 835 (stating that "'the continuing obligations of Plaintiffs' counsel' . . . . may justify increasing a lodestar"); *Chavez*, 162 Cal. App. 4th at 66 (awarding 2.5 multiplier based in part on time spent on claims filed after the supplemental notice was issued). Were the Court decline to incorporate the fees resulting from this continuing obligation in Plaintiffs' lodestar, it should consider this factor as further support of the requested multiplier. The second factor is the delay in payment of fees resulting from the protracted nature of this litigation. *Graham*, 34 Cal. 4th at 583-84 ("A percentage adjustment to reflect the delay in receipt of payment therefore may be appropriate."); *see also City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78, 85 (Cal. Ct. App. 1988) ("[T]he delay in payment from 1980 to 1984 was a proper basis for the increase."). To address this issue, Plaintiffs have requested that the lodestar be based upon counsel's present rates rather than their historical rates. Should the Court decline to apply Counsel's present rates to all hours worked, however, it would be appropriate to consider the delay in payment as a factor further supporting the multiplier requested herein.

to accept it, due to the unpopularity of the Plaintiffs and the very low probability of ever prevailing on the money damages claims. *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691 (9th Cir. Guam 1996); *see also Oberfelder v. City of Petaluma*, No. C-98-1470 MHP, 2002 U.S. Dist. Lexis 8635 (N.D. Cal. Jan. 29. 2002). As noted, many firms declined to co-counsel this case, and counsel has been ridiculed and harassed for working on behalf of alleged gang members. Orange Dec. ¶¶ 20, 34-35.

E. Litigation Expenses and Costs

"Costs are awarded to the prevailing party in civil actions as a matter of course absent express statutory provision, 'unless the court otherwise directs.'" *Nat'l Org. for Women v. Bank of Cal., Nat'l Ass'n.*, 680 F.2d 1291, 1294 (9th Cir. 1982) (quoting Fed. R. Civ. P. 54(d)). Plaintiffs are entitled to their taxable costs under Fed. R. Civ. Proc. 54(d), California Code of Civil Procedure §§ 1021.5 and 1033.5. *See Beasley*, 235 Cal App. 3d at 1421. In addition, under § 1988, the prevailing party "may recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005) (quoting *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.1994)). *See Pierce*, 905 F.Supp.2d at 1045. Each of Plaintiffs' counsel has submitted their itemization of recoverable costs and expenses being claimed in this litigation. Stormer Decl. ¶ 165, Exh. C; Orange Decl. ¶ 44, Exh. A. Plaintiffs seek costs exclusive of expert witness fees of $63,977.89 (HSR), $5,381.84 (Public Counsel), and $6,894.42 (Orange Law Offices), totaling $76,254.15. A complete summary of Plaintiffs' fees and costs is detailed in **Exhibit A.**

IV. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant their Motion.

Dated: October 13, 2016

Respectfully submitted,
ORANGE LAW OFFICES
PUBLIC COUNSEL
HADSELL STORMER & RENICK LLP

By: /s/ Dan Stormer
FOR PUBLIC RELEASE
Dan Stormer
Attorneys for Plaintiffs

Exhibit A: Description of Calculations for Attorney's Fees and Costs

Table 1

Firm	(1) Fees Incurred through 10/11/16	(2) Deduction: non-billed time	(3) Deduction: 5% across-the-board reduction	(4) Estimated Additional fees through Final Approval	(5) Total Fees, pre-multiplier [(1) – (2) – (3) + (4)]
HSR	$2,517,386.60	$27,074.10	$124,515.59	$34,500.00	$2,400,296.91
Public Counsel	$913,452.00	$11,149.50	$45,115.13	$50,250.00	$907,437.37
Orange Law Offices	$1,682,950.50	$0	$84,147.53	$34,425	$1,633,227.97
Totals	**$5,113,789.10**	**$38,223.60**	**$253,778.25**	**$119,175.00**	**$4,940,962.25**

Note: Although Orange Law Offices did not bill for the time of certain staff, fees that would have resulted from those staff are excluded from column (1) rather than included in (1) and deducted in column (2).

Table 2

Firm	(5) Total Fees [copied from (5) in above table]	(6) Fees incurred on fee motion through 10/11/16	Total fees, not including fees for fee motion or estimated Additional Fees [(5) – (6) – (4)]	(7) 2.0 Multiplier	(8) Total Fees [(7) + (6) + (4)]
HSR	$2,400,296.91	$45,242.50	$2,320,554.41	$4,641,108.82	$4,720,851.32
Public Counsel	$907,437.37	$43,417.50	$813,769.87	$1,627,539.74	$1,721,207.24
Orange Law Offices	$1,633,227.97	$24,327.00	$1,574,475.97	$3,148,951.94	$3,207,703.94
Totals	**$4,940,962.25**	**$147,487.00**	**$4,708,800.25**	**$9,417,600.50**	**$9,649,762.50**

Note: (5) "Total Fees" includes (6) "Fees incurred on fee motion.

Exhibit A: Description of Calculations for Attorney's Fees and Costs

Table 3

Firm	(9) Total Fees [copied from (8) in Table 2]	(10) Costs	Total Fees and Costs [(10) + (11)]
HSR	$4,720,851.32	$63,977.89	$ 4,784,829.21
Public Counsel	$1,721,207.24	$5,381.84	$ 1,726,589.08
Orange Law Offices	$3,207,703.94	$6,894.42	$ 3,214,598.36
Totals	**$9,649,762.50**	**$76,254.15**	**$ 9,726,016.65**