2014 WL 4425816 Only the Westlaw citation is currently available. United States District Court, E.D. California.

Darril HEDRICK, Dale Robinson, Kathy Lindsey, Martin C. Canada, Darry Tyrone Parker, individually and on behalf of all others similarly situated, Plaintiffs,

James GRANT, as Sheriff of Yuba County; Lieutenant Fred J. Asby, as Yuba County Jailer; and James Pharris, Roy Landerman, Doug Waltz, Harold J. "Sam" Sperbeck, James Martin, as members of the Yuba County Board of Supervisors, Defendants.

No. 2:76-cv-00162-GEB-EFB.

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Signed Sept. 5, 2014.

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Filed Sept. 8, 2014.

ORDER GRANTING MOTION FOR AN EXTENSION OF TIME AND GRANTING IN PART MOTION FOR ATTORNEY'S FEES

GARLAND E. BURRELL, JR., Senior District Judge.

*1 Plaintiffs filed an untimely motion for attorney's fees under 42 U.S.C. § 1988 for the services their counsel and certified law students rendered defending against Defendants' motion to terminate a consent decree governing conditions at the Yuba County Jail ("the Jail"). Plaintiffs also move under Federal Rule of Civil Procedure ("Rule") 6(b) for an extension of time to file the motion when it was filed. Defendants oppose each motion.

I. MOTION FOR AN EXTENSION OF TIME

Plaintiffs filed their attorney's fees motion after the deadline for such motions prescribed in Local Rule 293(a). This rule states in pertinent part: "Motions for awards of attorneys' fees ... shall be filed not later than twenty-eight (28) days after entry of final judgment." Defendants' motion to terminate the consent decree was denied in an order filed April 2, 2014. Plaintiffs filed their attorney's fees motion at 12:03 a.m., on May 1, 2014, which is twenty-nine days after denial of Defendants' motion. Since Plaintiffs' attorney's fees motion was filed approximately three minutes late, it was untimely.

Plaintiffs argue the "excusable neglect" standard in Rule 6(b) authorizes them to be granted the extension of time they seek and that they have satisfied this standard. Rule 6(b) states, in pertinent part: "When an act may or must be done within a specified time, the court may, for good cause, extend the time ... on motion made after the time has expired if the party failed to act because of excusable neglect." Fed.R.Civ.P. 6(b). "To determine whether a party's failure to meet a deadline constitutes 'excusable neglect,' courts must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1261 (9th Cir.2010) (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 395 (1993)).

Plaintiffs argue "there is no danger of prejudice to ... Defendants" since Plaintiffs' counsel emailed Defendants' counsel the attorney's fees motion prior to the filing deadline. (Pls.' Mot. for Extension of Time, 3:1, ECF No. 141.) Specifically, Plaintiffs' counsel declares: "After attempting and failing to file the documents, [on April 30, 2014,] at 11:48 p.m. I sent ... five pdf files (motion and 4 attachments) in an email message to ... counsel for Defendants." (Decl. of Carter White in Support of Pls.' Mot. For Extension of Time ("White Decl.") ¶ 3, ECF No. 141–1.) Plaintiffs have shown that it is unlikely that their tardiness prejudiced Defendants.

Plaintiffs further argue that the factor concerning the extent of their tardiness, and its potential impact on the judicial proceedings, also weighs in favor of finding

excusable neglect. The only proceeding scheduled was the hearing that Plaintiffs' scheduled in their attorney's fees motion that noticed the motion for hearing on a law and motion hearing date provided by the courtroom deputy's voice mail message, in which she lists available law and motion hearing dates. The circumstances involved with the late filing do not indicate that Plaintiffs' tardiness had a negative impact on the judicial proceeding. See Ahanchian, 624 F.3d at 1262 (finding excusable neglect where, inter alia, Plaintiff's counsel's three-day delay in filing a summary judgment opposition "would not have adversely affected either the summary judgment hearing date, which was ten days away, or the trial, which was two and a half months away.")

*2 Plaintiffs' counsel also avers their reason for the tardiness is that their counsel first "attempted to electronically file the Plaintiffs' motion for attorneys' fees" "at approximately 11:30 p.m."—one half hour before the filing deadline—and thereafter experienced computer problems which delayed filing until 12:03 a.m. (White Decl. ¶ 3.) "Although we are sympathetic with the circumstances of [Plaintiffs' counsel's computer] problems[,] ... it seems to us that the problem was really that [Plaintiffs' counsel] waited until the last minute to get [their] materials together. [Plaintiffs, counsel] apparently neglected the old proverb that 'sooner begun, sooner done.' When parties wait until the last minute to comply with a deadline, they are playing with fire." Spears v. City of Indianapolis, 74 F.3d 153, 157 (7th Cir.1996). Therefore, this factor does not weigh in favor of finding excusable neglect.

Plaintiffs also argue their counsel acted in good faith in connection with the tardiness. Plaintiffs emailed the attorney's fees motion to Defendants' counsel prior to the filing deadline, and filed their motion for an extension of time one day after they filed their attorney's fees motion. Plaintiffs have shown that their counsel acted in good faith concerning the late-filed attorney's fees motion.

Plaintiffs have shown that three of the four factors weigh significantly in favor of granting their motion for an extension of time. Therefore, Plaintiffs' Rule 6(b) motion is granted. See Bateman v. U.S. Postal Serv., 231 F.3d 1220, 1225 (9th Cir.2000) (finding excusable neglect despite Plaintiff's counsel's "weak justification" for delay, since "there was no evidence that [Plaintiff's counsel] acted with anything less than good faith," and the delay caused only a "minimal" amount of prejudice to Defendant and a "minimal" impact on judicial proceedings.)

II. ATTORNEY'S FEES MOTION

Plaintiffs seek an award of attorney's fees under 42 U.S.C. § 1988 for all services rendered on their behalf defending against Defendants' motion to terminate the consent decree. Defendants request that the ruling on the motion be deferred until after the Ninth Circuit has decided Defendants' appeal of the denial of their motion to terminate the consent decree.

"The district court[s] retain[] the power to award attorneys' fees after the notice of appeal from the decision on the merits ha[s] been filed." *Masalosalo by Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 957 (9th Cir.1983).

Recognition of th[e] authority [to determine fees while an appeal is pending] best serves the policy against piecemeal appeals[,] ... prevent[s] hasty consideration of postjudgment fee motions ... [and] prevent[s] postponement of fee consideration until after the circuit court mandate, when the relevant circumstances will no longer be fresh in the mind of the district judge.

Id. (citations omitted) (citing *Terket v. Lund*, 623 F.2d 29, 34 (7th Cir.1980)). "[T]he policy against piecemeal appeals" and deciding attorney's fees issues when "they are fresh in the mind of the district judge" favor denying Defendants' deferred ruling request. *Id.*

a. Legal Standard

*3 § 1988 provides in pertinent part: In any action or proceeding to enforce a provision of sections ... 1983 ... the court, in its discretion, may allow the prevailing party

... a reasonable attorney's fee as part of the costs, 42 U.S.C. § 1988(b).

"To determine the amount of a reasonable fee under § 1988, district courts typically proceed in two steps. First, courts generally 'apply ... the lodestar method to determine what constitutes a reasonable attorney's fee.' "

Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th Cir.2013) (quoting Costa v. Comm'r of Soc. Sec. Admin., 690 F.3d 1132, 1135 (9th Cir.2012)). "Under the lodestar method, the district court 'multiplies the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.' "Id. "Second, '[t]he district court may then adjust [the lodestar] upward or downward based on," the following factors:

(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Id. (alteration in original) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir.2008), and *id.* at 1209, n. 11. (quoting *Morales v. City of San Rafael*, 96 F.3d 359, 363, n. 8 (9th Cir.1996)).

b. Discussion

i. Whether Plaintiffs Are Prevailing Parties for the Purposes of § 1988

Plaintiffs argue they are prevailing parties under § 1988 since from September 2013 to April 2014 their counsel and certified law students defended against Defendants' motion to terminate the consent decree. Defendants counter that Plaintiffs are not prevailing parties since the denial of Defendants' motion "changed *nothing* about the legal relationship between ... Plaintiff [s] ... and ... Defendant[s]." (Def.'s Opp'n to Pl.'s Mot. for Attorney's Fees ("Defs.' Opp'n") 3: 24–25, ECF No. 143.)

Attorney's fees are recoverable for "postjudgment enforcement" of a consent decree, which "includes defending against efforts to terminate a consent decree." Graves v. Arpaio, 633 F.Supp.2d 834, 844 (D.Ariz.2009) aff'd, 623 F.3d 1043 (9th Cir.2010) (citing Cody v. Hillard, 304 F.3d 767, 777 (8th Cir.2002)); cf. Prison Legal News v. Schwarzenegger, 608 F.3d 446, 451 (9th Cir.2010) (citing Keith v. Volpe, 833 F.2d 850, 855-57 (9th Cir.1987)) ("[A] party ... may recover attorneys' fees under § 1988 for monitoring compliance with [a consent] decree, even when such monitoring does not result in any judicially sanctioned relief."); Webb v. Ada Cnty., 285 F.3d 829, 835 (9th Cir.2002) (holding "attorney's fees incurred for postjudgment enforcement of [a] district court's ... consent decree were compensable under the [Prison Litigation Reform Act]," which limits the fees awardable to prisoners under § 1988.).

*4 Since Plaintiffs have defended against Defendants' motion to terminate the consent decree, Plaintiffs are prevailing parties entitled to an attorney's fees award.

ii. Whether the Prison Litigation Reform Act Limits the Amount of Attorney's Fees Plaintiffs Recover

Plaintiffs argue they are entitled to the full amount of fees they seek and that what they request is not limited by the fee restriction in the Prison Litigation Reform Act's ("PLRA") in 42 U.S.C. § 1997e(d)(1).

The PLRA prescribes, in pertinent part:

In any action brought by a prisoner who is confined to any jail ..., in which attorney's fees are authorized under section 1988 ..., such fees shall not be awarded, except to the extent that—

- (A) the fee was directly and reasonably incurred in proving an *actual violation* of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 ...; and
- (B) (i) the amount of the fee is proportionately related to the court ordered relief for *the violation*; or
- (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

42 U.S.C. §§ 1997e (d)(1)(A)-(B) (emphasis added).

Under the PLRA, "a plaintiff is entitled to fees incurred in enforcing a judgment entered upon proof that the plaintiff's constitutional rights had been violated." Webb v. Ada Cnty., 285 F.3d 829, 834 (9th Cir.2002). However, "the court ... must assure that the case is not being milked by a [plaintiff] after the [judgment] has been obtained, for fees that are unreasonable in amount, for work not reasonably performed to enforce the relief, or for work not directly related to enforcing the relief." Balla v. Idaho, 677 F.3d 910, 919 (9th Cir.2012).

Plaintiffs argue their fee request should be awarded since the consent decree they defended was entered upon a finding of constitutional violations at the Jail, and therefore is consistent with the PLRA's requirement that fees for defending a consent decree must concern a consent decree that was entered upon proof of a constitutional violation.

Concerning constitutional violations, the consent decree states: "On November 12, 1976 the Court ... filed its Findings of Facts, Conclusions of Law, and Order granting ... [Plaintiffs'] motions for partial summary judgment [,]" concerning "... [a]ccess to [l]egal [m]aterials," and "... female participation in the ... Jail trusty program." (Consent Decree, 2:13–16, 2:3–5 ECF No. 120–1.) This Order was "subsumed" into the consent decree, upon the Court's final approval of the consent decree on May 2, 1979. (*Id.* at 3:10–15.) Therefore, Plaintiffs have shown they are entitled to attorney's fees for legal services rendered defending the portions of the consent decree concerning access to legal materials and female participation in the Jail trusty program (hereafter, "the relevant portions of the decree").

*5 However, the other portions of the consent decree prescribe relief not related to the claims on which the partial summary judgment was granted. Further, the parties "waive[ed] a hearing and findings of fact and conclusions of law on all issues raised by the Complaint that are disposed of [in the consent decree]." (Consent Decree 2:30–32.) Therefore, Plaintiffs have not shown they are entitled to attorney's fees for defending those portions of the consent decree that do not concern accessing legal materials or female participation in the Jail's trusty program.

The Court's decisions concerning whether law student billings are compensable under the PLRA are in Appendix 1, which is attached to this order, and are also below; Appendix 1 contains a copy of the law students' time sheets.³ Since Plaintiffs have not explained precisely

which billing entries concern the relevant portions of the consent decree, certain entries are reduced based on whether Plaintiffs' proposed findings of fact and conclusions of law ("proposed findings"), filed on March, 19, 2014, or the declarations of detainees which Plaintiffs filed on March 31, 2014, indicate that the entry concerns a relevant portion of the consent decree. (ECF Nos. 129, 133–1, 133–2). These decisions were made to "assure that" Plaintiffs are not compensated for "fees that are unreasonable in amount, for work not reasonably performed to enforce the relief, or for work not directly related to enforcing the relief." *Balla*, 677 F.3d at 919.

For example, since declarations of Erik-James Pendergraph, Neil Ernest Carranza, Tiara Tyson, Shannon Silva, Peter Azevedo, Patrick Perry, Jon Bechtel, and Jennelle Cropsey do not contain any statement concerning access to legal material or the Jail's trusty program, Plaintiffs have not shown that they are entitled to attorney's fees for the hours billed concerning these detainees. Further, each billing entry concerning detainee Theron Holston is reduced by approximately 67% since only one of three declarations submitted by Mr. Holston concerns the relevant portions of the consent decree. Similarly, each entry concerning detainee George Pasion is reduced by 75% since only one of four declarations submitted by Mr. Pasion concern the relevant portions of the consent decree. Moreover, entries concerning visits to the jail for unspecified purposes, Plaintiffs' requests for production of documents concerning unspecified subjects, and entries related to preparation of Plaintiffs' proposed findings were reduced by 87.5%, since only one of eight sections in the proposed findings concerns a relevant portion of the consent decree; specifically, the access to legal materials section. Additionally, entries which record services rendered concerning individuals who are not mentioned in the proposed findings or who did not produce a declaration that Plaintiffs filed on the case docket are not considered compensable under the PLRA since Plaintiffs have not shown these services concern relevant portions of the consent decree.

*6 Where Plaintiffs' counsel block-billed tasks both related to and unrelated to the relevant portions of the consent decree, the hours claimed in the entry were reduced based on the description of the billed tasks to "fairly balance' those hours that were actually billed in block format." *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir.2007) (quoting *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir.2001)).

For example, December 15, 2013 entry number 57179

bills .2 hours and reads: "Read letter from Patrick Perry re willing to meet; review declarations returned to CRC from Passion and Holston." Since the entry contains two sub-entries separated by the semi-colon, the entry indicates that approximately one half of the time was spent reading a letter and one half of the time was spent reviewing declarations. Plaintiffs have not shown that the time spent reading the Perry letter is compensable since Perry's declaration does not address the relevant portions of the consent decree. To reflect this, the billing entry is reduced by half (.1 hours). The remaining .1 hours is further reduced to reflect that Plaintiffs have not shown that more than approximately 33% of the entry concerning Holston and 25% of the entry concerning Pasion relate to relevant portions of the consent decree. After these reductions are made, the fee award is .03 hours since it was rounded to the nearest hundredth.

Similarly, for any block-billed trips to the jail, Plaintiffs are credited with 2.5 hours of travel time. The travel time estimate is based on the average of two separately billed car trips to the jail, billed on February 11, 2014 (Entry No. 57746) and February 18, 2014 (Entry No. 57841). Further, where two students entered separate billing entries for a jail visit on the same day, the two students' hours are credited as having worked on the same tasks, unless an entry indicates otherwise.

In addition to the fees sought for law student services, Plaintiffs seek 46 hours of fees for their counsel's services. Their counsel declares that these hours comprise eight jail visits during which he accompanied law students; 1.5 hours revising Plaintiffs' Opposition to Defendants' Motion to Terminate; 3 hours revising Plaintiffs' Joint Statement and Proposed Findings of Fact; and 1.5 hours revising Plaintiffs' request for an order to seal. Plaintiffs have not submitted time sheets of their counsel's hours; however, review of the student time sheets and the documents Plaintiffs' counsel revised indicates that only a portion of these hours are compensable under the PLRA. Specifically, the time sheets reveal that only 6.3 hours of fees should be awarded for Plaintiffs' counsel's jail visits. Further, since only one eighth of the proposed findings concerns relevant portions of the consent decree, this document reveals that only .375 hours should be awarded for the time Plaintiffs' counsel spent revising it. Moreover, Plaintiffs have not shown that attorney's fees should be awarded for any time spent revising the request for an order to seal, since Plaintiffs' request concerns medical records that have not been shown to have a relationship to the relevant portions of the consent decree.

*7 The 1.5 hours Plaintiffs' counsel spent revising the opposition to Defendants' motion to terminate are compensable, since the opposition brief evinces that these fees were reasonably incurred enforcing the relief ordered in the relevant portions of the consent decree.

iii. Whether Law Students Worked Reasonable Hours Defending Relevant Portions of The Consent Decree

The parties dispute whether law students worked an unreasonable number of hours. Specifically, the parties dispute whether certain law student time sheet entries are redundant, concern clerical tasks, concern unnecessary research, or are "not reasonably related to this litigation." (Defs.' Mot. 7:6–7.) These disputes are only decided for those entries that concern relevant portions of the consent decree.

Under the loadstar method, "a 'reasonable' number of hours equals '[t]he number of hours ... [which] could reasonably have been billed to a private client." " Gonzalez, 729 F.3d at 1202 (alteration in original) (quoting Moreno, 534 F.3d at 1111). "The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked." Gates v. Deukmejian, 987 F.2d 1392, 1397 (9th Cir.1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)). If the fee applicant submits vague records, the district court may "simply reduce[] the fee [award] to a reasonable amount." Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1121 (9th Cir.2000); see Neil v. Comm'r of Soc. Sec., 495 F. App'x 845, 847 (9th Cir.2012) (stating, "the district court acted within its discretion in reducing Neil's fee award by .3 hours to account for an ... entry that was vague and inadequately explained.") Furthermore, where a fee applicant chooses to "block bill some of its time rather than itemize each task individually," the court may "impose a reduction," as long as it 'explain how[s] or why ... the reduction ... fairly balance[s]' those hours that were actually billed in block format." Welch, 480 F.3d at 948 (quoting S orenson, 239 F.3d at 1146). Moreover, a plaintiff may not receive attorney's fees for clerical tasks. See Nadarajah v. Holder, 569 F.3d 906, 921 (9th Cir.2009) ("When clerical tasks are billed at hourly rates, the court should reduce the hours requested to account for the billing errors."); Yates v. Vishal Corp., 11-CV-00643-JCS, 2014 WL 572528, at

* 6 (N.D.Cal. Feb. 4, 2014) (refusing to award attorney's fees for "purely clerical," tasks "such as posting letters for mail, photocopying, three-hole punching, internal filing, calendaring, and preparing the summons and complaint for filing.")

Each of the law students' time sheet entries has been reviewed. Certain time sheet entries concern clerical tasks or are vague. Fees are not awarded for services recorded in these entries. *See Nadarajah*, 569 F.3d at 921 (reducing fees to account for the billing of clerical work); *Fischer v. SJB–P.D. Inc.*, 214 F.3d at 1121 (stating fee award may be reduced where entries are vague); *Neil*, 495 F. App'x at 847 (affirming reduction in fee award for vague entry). Specific deductions to the law student hours are presented in Appendix 1.

iv. Hourly Rate For Plaintiffs' Counsel and Law Students

*8 Plaintiffs seek an award of attorney's fees based on a rate of \$211.15 per hour for Plaintiffs' counsel's services, which Plaintiffs argue is the maximum hourly rate the PLRA authorizes. (Pls.' Mot. for Attorney's Fees ("Pls.' Mot."), 10: 2–4, ECF No. 139.)

Concerning this, the PLRA prescribes, in pertinent part:

In any action brought by a prisoner who is confined to any jail, ... in which attorney's fees are authorized under [42 U.S.C. §] 1988 ... [n]o award of attorney's fees ... shall be based on an hourly rate greater than 150 percent [(the "multiplier")] of the hourly rate established under section 3006A of Title 18 [(the Criminal Justice Act ["CJA"])] for payment of court-appointed counsel [(the "baseline rate")].

42 U.S.C. §§ 1997e (d)(1), (3). The Ninth Circuit has stated the baseline PLRA hourly rate "is the amount authorized by the Judicial Conference." Webb v. Ada Cnty., 285 F.3d 829, 839 (9th Cir.2002); accord Perez v.

Cate, 632 F.3d 553, 555–56 (9th Cir.2011) (setting the maximum hourly rate under the PLRA at "150 percent of \$113" since the "Judicial Conference [had] increased the maximum hourly rate for court-appointed counsel to \$113.") The rates authorized by the Judicial Conference are published in the Guide to Judiciary Policy. See 7 Guide to Judiciary Policy § 230.16 available at http://www.uscourts.gov/FederalCourts

/AppointmentOfCounsel/CJAGuidelinesForms/vol7PartA/vol7PartAChapter2 .aspx# 230_16; *Gilman v. Brown*, CIV. S-05-830 LKK/CK, 2014 WL 3735401, at *1 (E.D.Cal. July 28, 2014) (quoting 7 Guide to Judiciary Policy § 230.16 for the rates established by the Judicial Conference.) Since the Judicial Conference has changed the established hourly rate over the past several years, the baseline rate of compensation under the PLRA depends on when the services were performed. *See Gilman*, 2014

WL 3735401, at *1 ("[T]he baseline rate ... depends on

the year the services were performed")

The Judicial Conference established a rate of \$110 per hour for services performed from September 1, 2013 to February 28, 2014, and a rate of \$126 per hour for services performed from March 1, 2014 to the present. The first entry in the time sheets submitted by Plaintiffs is dated September 3, 2013, and Plaintiffs seek fees for their counsel's services through the filing of their attorney's fees reply brief on May 23, 2014.⁴ Therefore, Plaintiffs have shown they are entitled to a baseline rate of \$110 per hour for their counsel's services prior to March 1, 2014, and \$126 per hour for their counsel's subsequent services.⁵

Plaintiffs further argue that the maximum PLRA multiplier (150%) should be applied to their counsel's baseline hourly rates, since similarly experienced attorneys in the Eastern District of California have received between \$350 and \$450 per hour under § 1988. Defendants counter, arguing in a conclusory manner that it would be inequitable to award the maximum multiplier for Plaintiffs' counsel's services.

*9 Under the loadstar method, the reasonable hourly rate is "calculated according to the prevailing market rates in the relevant legal community, and the general rule is that the rates of attorneys practicing in the forum district, here the Eastern District of California ... are used." *Gates*, 987 F.2d at 1405 (citation omitted). "Within this geographic community, the district court should 'tak[e] into consideration the experience, skill, and reputation of the attorney" *Gonzalez*, 729 F .3d at 1205 (first alteration in original) (quoting *Dang v. Cross*, 422 F.3d 800, 813

(9th Cir.2005)).

" '[T]he burden is on the fee applicant to produce satisfactory evidence ... that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.' " Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 980 (9th Cir.2008) (quoting Blum v. Stenson, 465 U.S. 886, 895 n. 11 (1984)). "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases ... are satisfactory evidence of the prevailing market rate." United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir.1990); see also Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir.2011) (indicating a district court may "rely on its own familiarity with the legal market" in determining a reasonable hourly rate); Moreno, 534 F .3d at 1115 ("District judges can ... consider the fees awarded by other judges in the same locality in similar cases.").

Plaintiffs argue the maximum PLRA multiplier of 150% should be applied to the baseline hourly rates for their counsel's services. This would entitle Plaintiffs to a \$165 hourly rate for Plaintiffs' counsel's services prior to March 1, 2014, and an \$189 hourly rate for Plaintiffs' counsel's subsequent services. Plaintiffs argue these hourly rates are reasonable, since in a civil rights case captioned Hunter v. Cnty. of Sacramento, a case that was not governed by the PLRA, the Court concluded a \$350 hourly rate was reasonable for an attorney with experience comparable to Plaintiffs' counsel's experience. 2:06-CV-00457-GEB, 2013 WL 5597134, at *8 (E.D.Cal. Oct. 11, 2013). Defendants counter with the conclusory argument that it would be inequitable to award Plaintiffs the maximum PLRA multiplier; however, this argument fails to rebut Plaintiffs' reasonable hourly rate evidence. Plaintiffs have shown that it is reasonable to apply the maximum PLRA multiplier for their counsel's services.

Plaintiffs further argue they are entitled to the maximum PLRA hourly rate for hours billed by the law students. Plaintiffs submit a declaration from Andrew Bluth, an attorney at Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury") in support of this argument. Bluth avers that law students at his firm bill \$315 per hour. Defendants counter that Plaintiffs have not shown what Bluth avers is relevant to the determination of the law student fees in this action, since Bluth does not describe the nature of the services the law students rendered for Pillsbury and how those services compare to the services rendered by the

law students in this action. Defendants further argue that law students at Pillsbury bill a higher hourly rate than law students have received under § 1988 in recent cases in the Eastern District of California.

*10 Bluth's averments lack an explanation of the complexity of the matters on which law students worked at Pillsbury and therefore do not demonstrate that the hourly rates billed by law students at the Pillsbury firm are for services comparable to the services at issue. Further, recent decisions in the Eastern District of California have awarded § 1988 fees for services rendered by law clerks, including those who graduated from law school, at hourly rates between \$100 and \$125. See Miller v. Schmitz, 1:12–CV–00137–LJO, 2014 WL 642729, at *4 (E.D.Cal. Feb. 18, 2014) (setting hourly rate for law clerk who graduated from law school at \$100 per hour); Hall v. City of Fairfield, 2:10–CV0508 DAD, 2014 WL 1286001, at *8 (E.D.Cal. Mar. 31, 2014) (same at \$125 per hour).

In light of the baseline PLRA rates applicable to Plaintiffs' counsel and the lack of evidence in the record concerning the experience and expertise of the law students, Plaintiffs have not shown that the law students' hourly rate should be approximately the same as their counsel's PLRA baseline rates of \$110 per hour for services performed from September 1, 2013 to February 28, 2014, and \$126 per hour for services performed from March 1, 2014 to the present. See Camacho, 523 F.3d at 980 (" '[T]he burden is on the fee applicant to produce satisfactory evidence ... that the requested rates are in line with those prevailing in the community"); cf. Borunda v. Richmond, 885 F.2d 1384, 1392 (9th Cir.1988) ("We have ... denied section 1988 fees on appeal ... because counsel failed to adequately brief the issues he presented, thereby requiring the court to engage in independent research.") Nor does any cited case from the relevant community contain information justifying what the law students' rate should be in this case. However, it is presumed that a lower hourly rate should apply to the law students' to account for their lack of expertise. See Barjon v. Dalton, 132 F.3d 496, 503 (9th Cir.1997) ("presume [ing]" that an attorney reduced the value of a request for "law clerk costs" "to account for her law clerk's lack of experience and expertise.") Therefore, the reasonable hourly rate for the law students is one half of the PLRA baseline rates applicable to this action: \$55 per hour for services performed from September 1, 2013 to February 28, 2014, and \$63 per hour for services performed from March 1, 2014 to the present.

v. Whether Adjustment to the Loadstar is Warranted

Defendants argue that the loadstar figure should be adjusted downward, contending "[P]laintiff achieved only limited success" in opposing Defendants' motion to terminate. (Defs.' Opp'n, 4:20-22 (quoting Hunter v. Cnty. of Sacramento, C2:06-CV-00457-GEB, 2013 WL 5597134, at *7 (E.D.Cal. Oct. 11, 2013).) Specifically, Defendants contend Plaintiffs attempted to expand the scope of the consent decree and "were successful in none of their efforts" to do so. (Defs.' Opp'n 4:4-5.) However, PLRA limits the fees recoverable by Plaintiffs to those that are "proportionately related to the court ordered relief for [a proven civil rights] violation[] or ... directly and reasonably incurred in enforcing the relief ordered for violation." §§ 1997e (d)(1)(B) (i)-(ii). Defendants do not address this statutory restriction on fees in this portion of their opposition. Therefore, Defendants' argument is unpersuasive.

vi. Whether Travel Expenses Should be Reimbursed

*11 Plaintiffs also seek reimbursement for their counsel and law students' travel expenses. Defendants do not oppose this portion of the motion.

Section 1988 "allows for recovery of reasonable out-of-pocket expenses," including travel costs, so long as they were "reasonably expended." Woods v. Carey, 722 F.3d 1177, 1180 (9th Cir.2013). However, Plaintiffs have not addressed whether the PLRA's fee limitation, prescribed in §§ 1997e (d)(1)(A)-(B), restricts the travel expenses they may recover. See §§ 1997e (d)(1)(B)(i)-(ii) (stating "fee[s] [must be] proportionately related to the court ordered relief for [a proven civil rights] violation; or ... directly and reasonably incurred in enforcing the relief ordered for violation."). Therefore, Plaintiffs have not shown they should be reimbursed for travel expenses not shown to concern the aforementioned pertinent portions of the consent decree.

Plaintiffs seek the following reimbursements for travel expenses:

Date	Destination	Mileag e	R a t e	Amo unt	Notes
09/20/13	Marysville	98	5	55.3	
			6	7	
			5		
09/26/13	Sacramento	33	5	18.6	Hearing on motion to terminate
			6	4	consent decree
			5		
10/21/13	Marysville	98	5	55.3	
			6	7	
			5		
10/22/13	San Bruno	164	5	92.6	National Archives to research Hedrick
			6	6	court case file

			5		
			5		
11/12/13	Sacramento	37	5	20.9 0	Meeting at Mexican Consulate
				U	
			5		
11/25/13	Marysville	98	5	55.3	
			6	7	
			5		
12/06/13	Marysville	98	5	55.3	
	·		6	7	
			5		
01/17/14	Marysville	98	5	54.8	
			6	8	
			0		
01/31/14	Lower Lake	208	5	116.	Konocti Conservation Camp, t o meet
			6	48	with inmate Perry
			0		
02/11/14	Marysville	98	5 6	54.8 8	
				٥	
			0		
02/14/14	Marysville	98	5	54.8	Students picked up documents i n
			6	8	response to RFP
			0		
02/18/14	Marysville	98	5	54.8	
			6	8	
			0		

02/25/14	Marysville	98	5	54.8	
			6	8	
			0		
Total				744.	
				56	

Plaintiffs have not shown that the October 21, 2013 visit to Marysville should be reimbursed, since Plaintiffs do not seek attorney's fees for services performed during this visit and Plaintiffs' counsel declares that during the visit counsel and law students attempted to "obtain ... files ... from [Plaintiffs'] previous counsel," a service for which Plaintiffs' counsel "would not bill a paying client." (Decl. of Carter White in Support of Pls.' Mot. ¶ 12, ECF No. 139-2.) Plaintiffs have failed to explain whether the meeting at the Mexican Consulate concerns the relevant portions of the consent decree. Further, Plaintiffs have not shown that the meeting with inmate Perry concerns the relevant portions of the consent decree since the filed Perry declarations do not concern access to legal materials or female participation in the Jail's trusty program. (Decl. of Patrick Perry, ECF 133-1.) Moreover, review of the law student billing records indicates that Plaintiffs have not shown that the visits to the Jail on December 6, 2013, January 17, 2014, February 11, 2014, February 18, 2014, and February 25, 2014, concerned relevant portions of the consent decree. Therefore, Plaintiffs have not shown these travel expenses are compensable.

vii. Whether Plaintiffs Are Awarded Fees for Time Expended on The Fee Motion

*12 Plaintiffs also seek fees for the hours their counsel expended composing the opening and reply briefs for the attorney's fees motion. However, Plaintiffs have not submitted any evidence concerning the number of hours their counsel expended on these tasks. Therefore, this

portion of the motion is denied. *See Gates*, 987 F.2d at 1397 ("The fee applicant ... must submit evidence in support of those hours worked.").

viii. Whether Plaintiffs Are Awarded Interest on Their Fee Award

Plaintiffs seek an award of interest on their fee award, arguing interest should begin accruing the date on which the fee award order issues. Defendants do not oppose this portion of the motion. Since a party may recover interest on a § 1988 fee award, this portion of the motion is granted. See Spain v. Mountanos, 690 F.2d 742, 748 (9th Cir.1982) (holding that interest may be awarded on § 1988 attorney's fees); Jones v. Cnty. of Sacramento, CIV S-09-1025 DAD, 2011 WL 3584332, at *19 (E.D.Cal. Aug. 12, 2011) (holding that "interest will begin accruing on plaintiff's award of fees on the date of this order. ...")

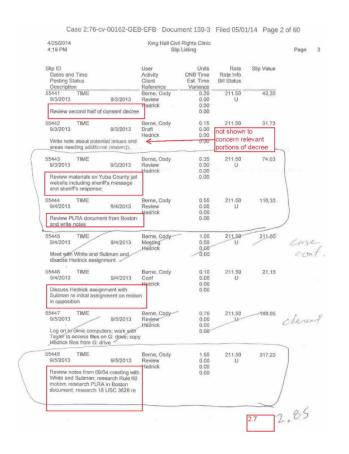
ix. Total Attorney's Fees Award

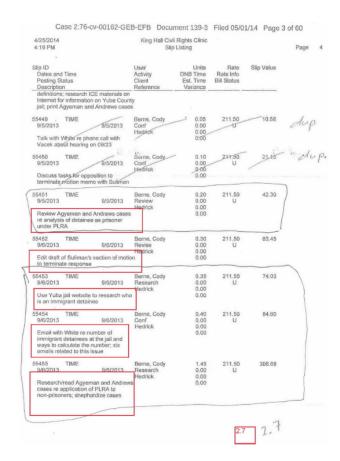
For the stated reasons, Plaintiffs' motion for attorney's fees is granted in part. The total attorney's fees award is: \$7,826.60. The award is calculated as follows:

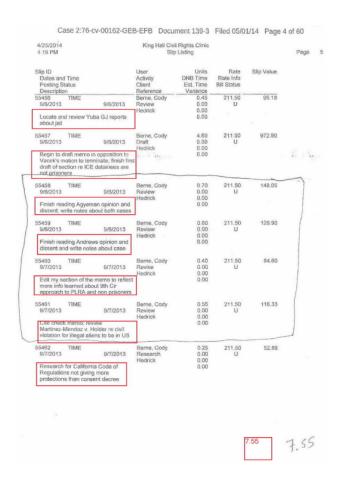
Total

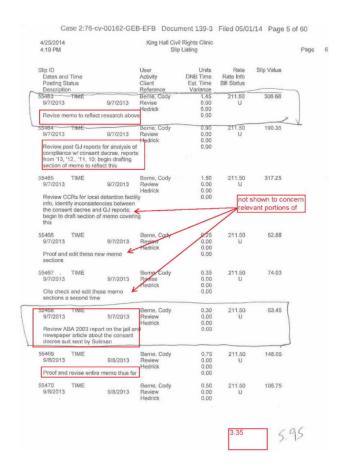
	9/3/2013–2 14	9/3/2013–2/28/20 14		3/1/2013–5/23/ 2014	
	Hours	R	Hou	R	
		а	rs	а	
		t		t	
		е		е	
Plaintiffs' Counsel	7.8	\$.375	\$	\$1357.88
		1		1	
		6		8	
		5		9	
aw Students	108.34	\$	3.7	\$	\$6,191.80
		5		6	
		5		3	
ravel Expenses					\$276.92
Tavel Expenses					\$270.5Z
otal otal					\$7,826.60

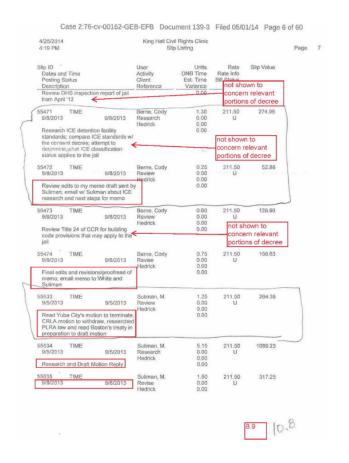
APPENDIX 1

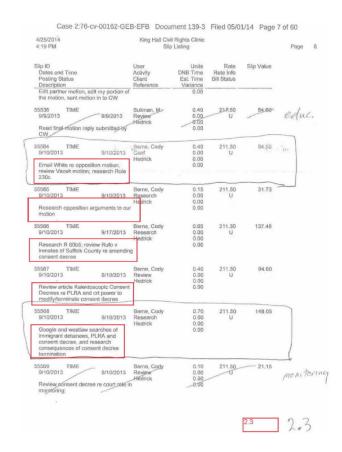


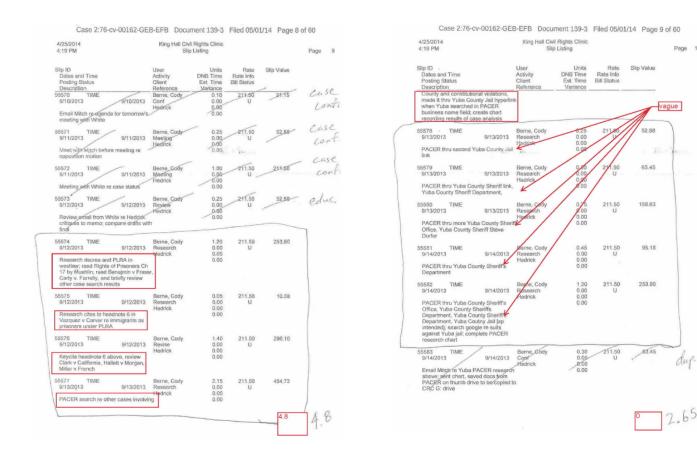


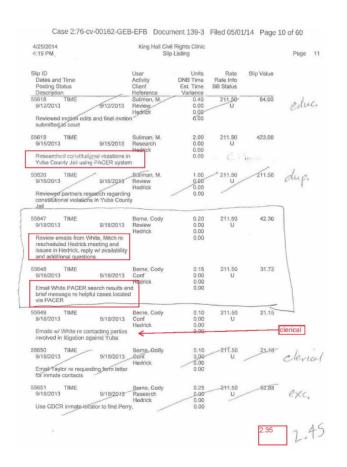


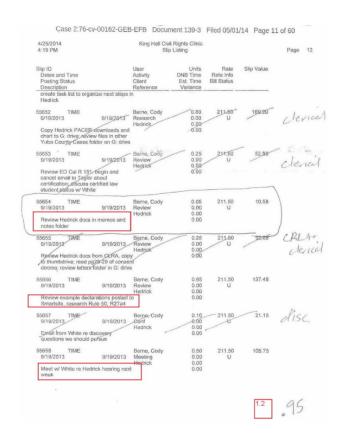


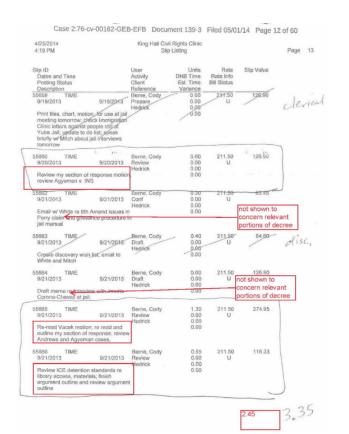


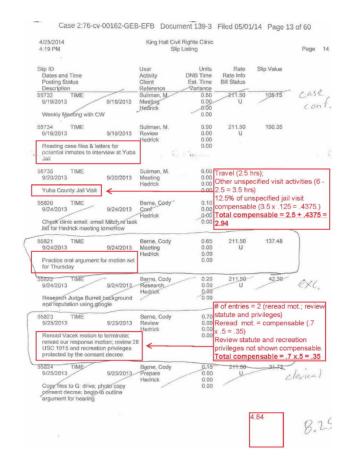


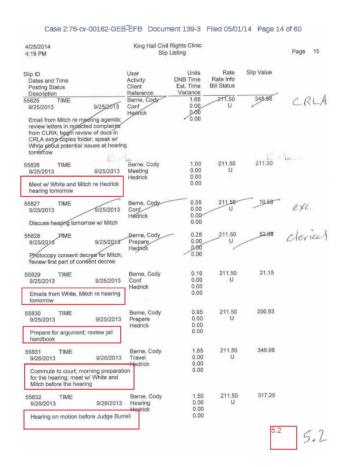


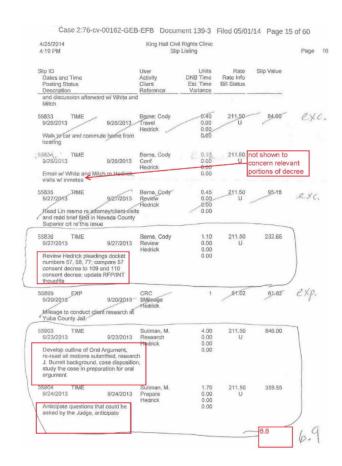


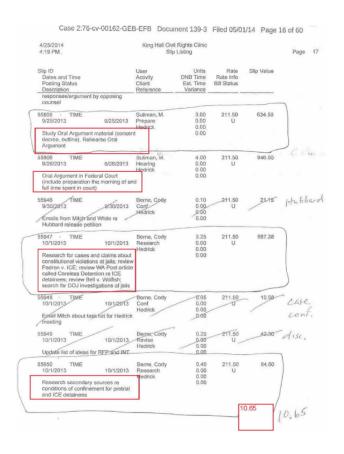


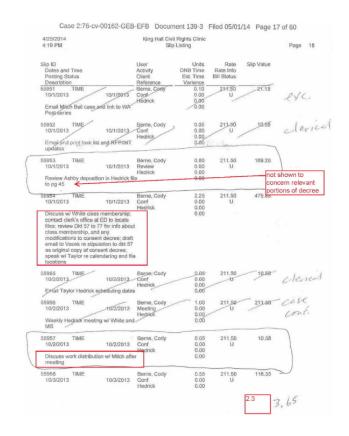


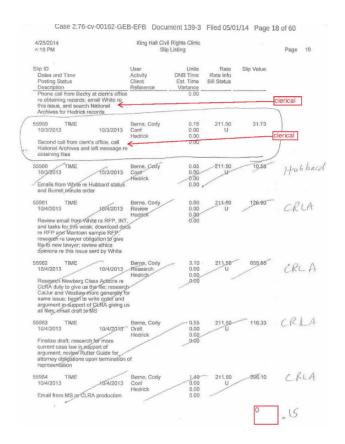


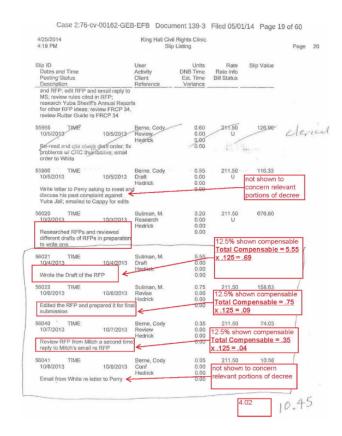


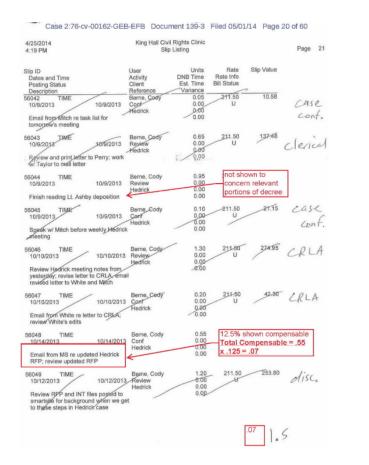


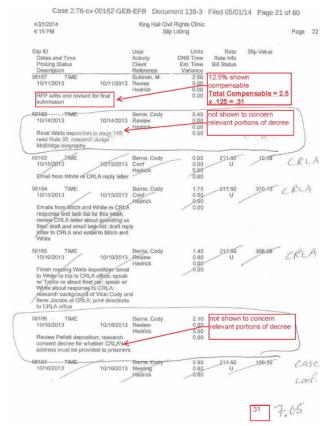


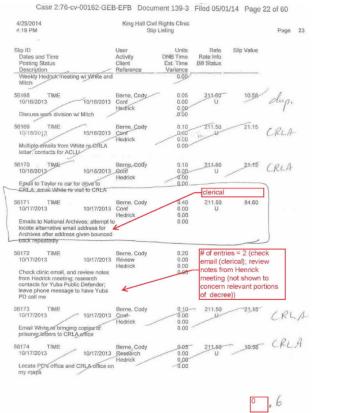


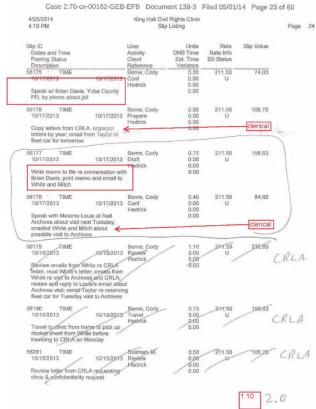


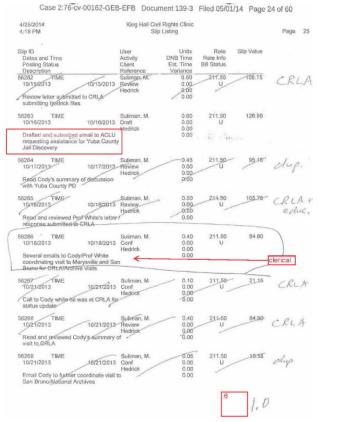


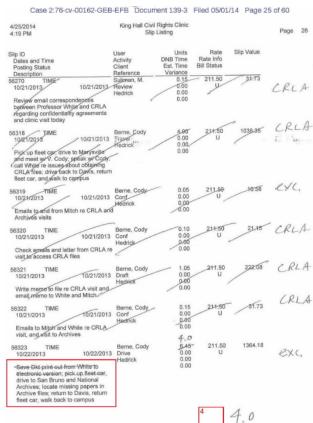


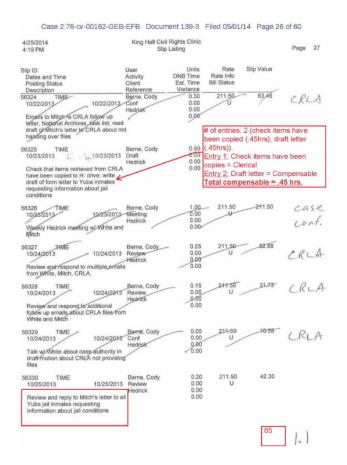


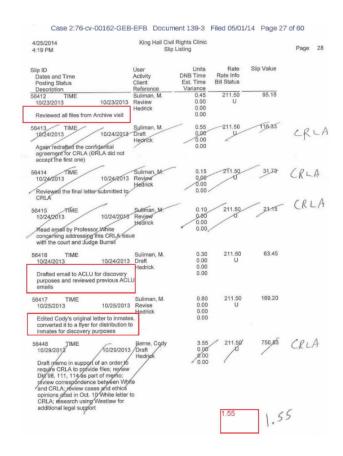


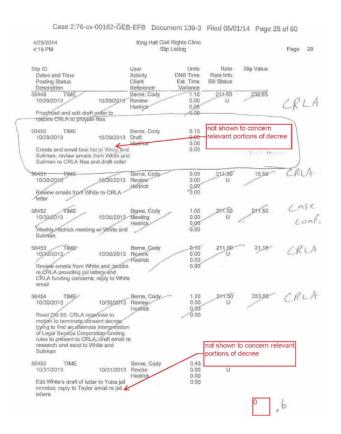


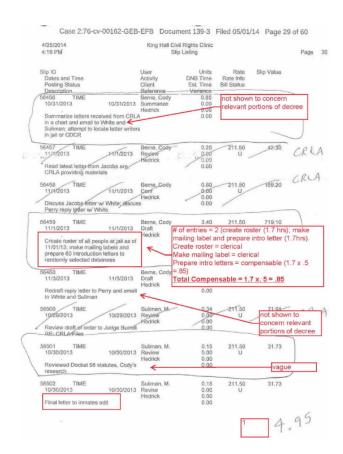


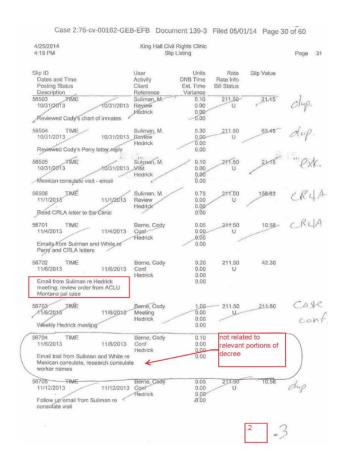


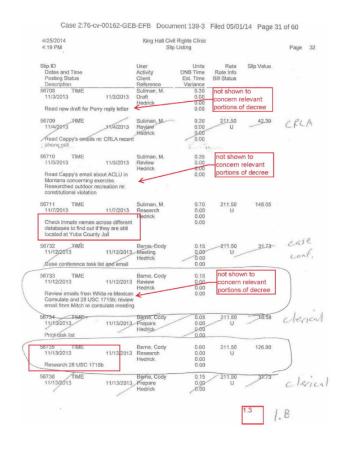


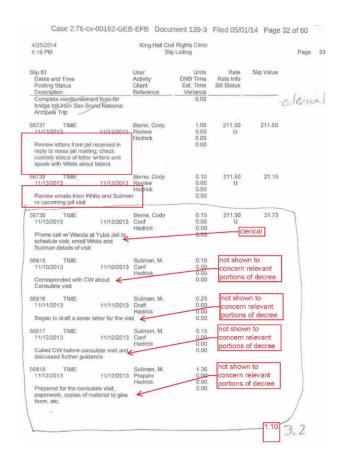


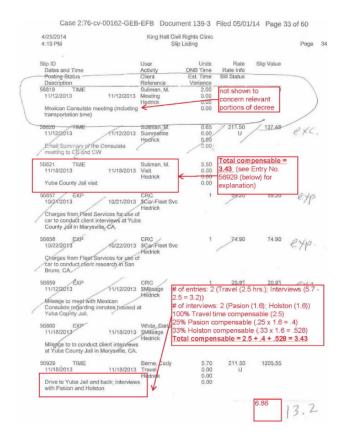


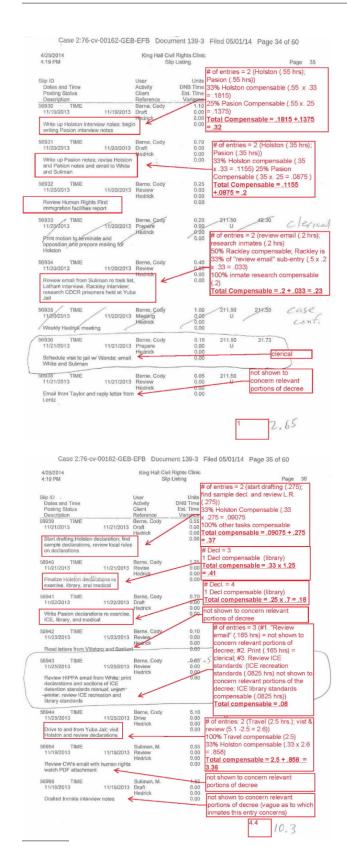


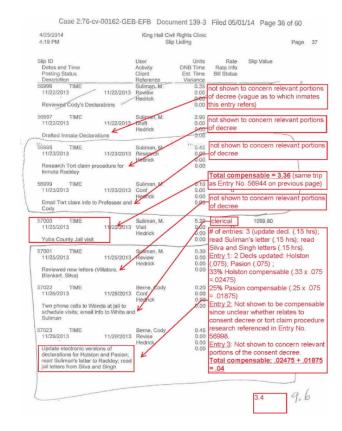


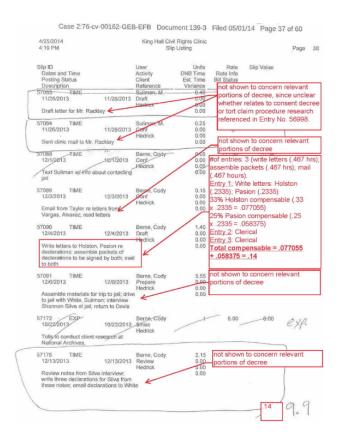


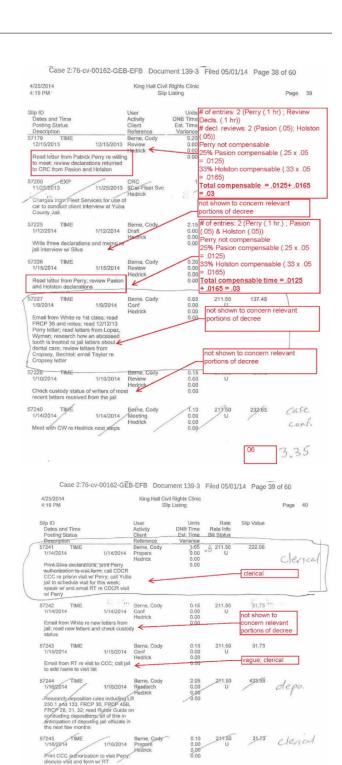












57246 TIME 1/17/2014

57247 TIME 1/17/2014

Talk W AJ about Hedrick; print Silva declaration again

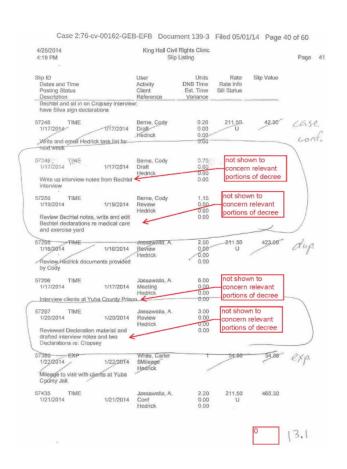
Travel to jail w/ CW and AJ; interview

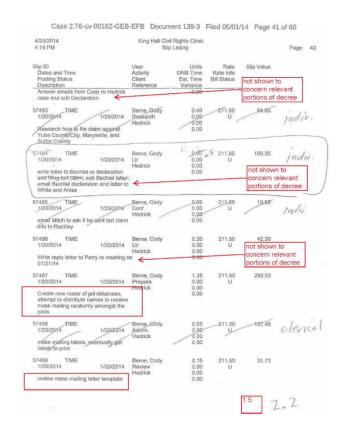
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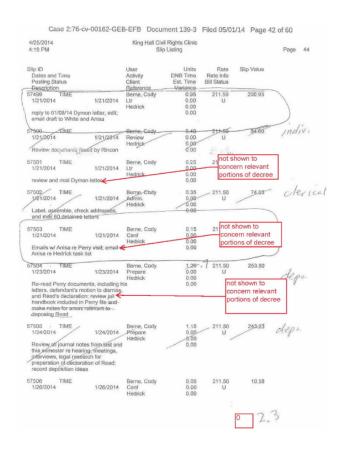
portions of decree

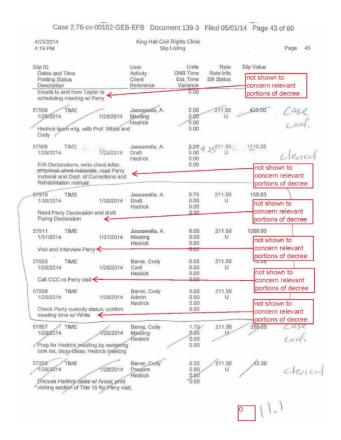
6.2

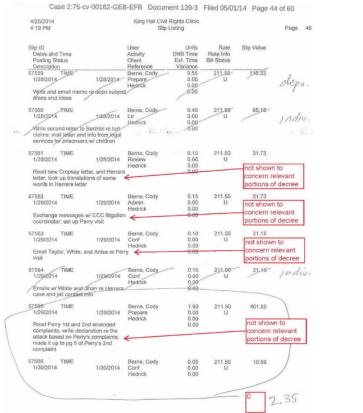
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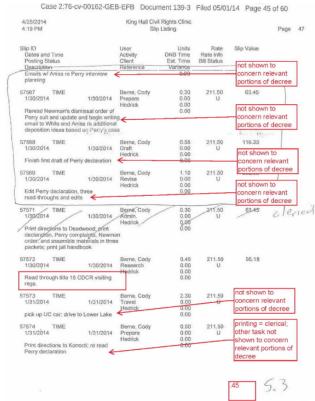


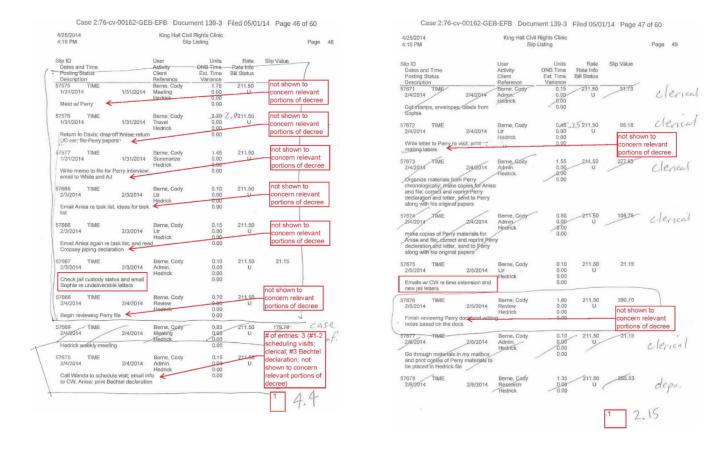


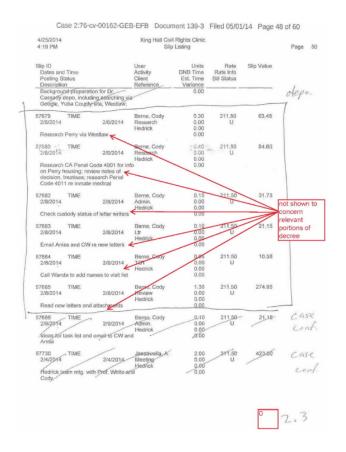


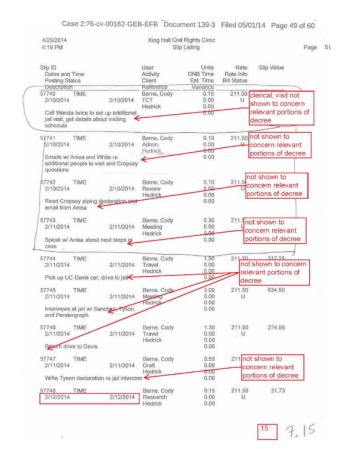


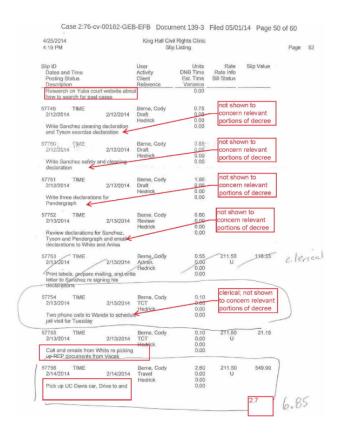


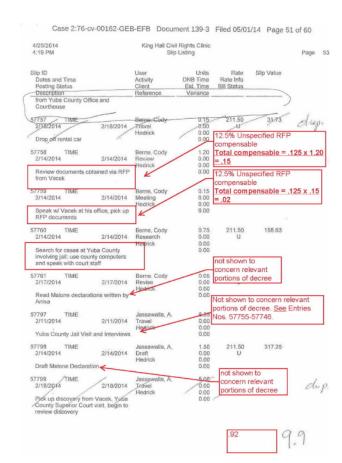


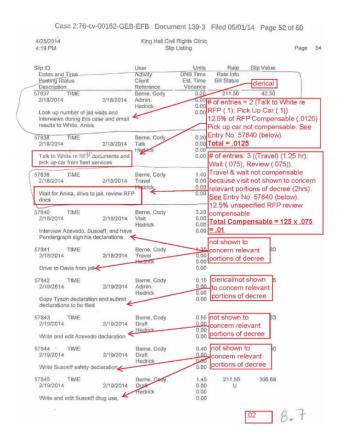


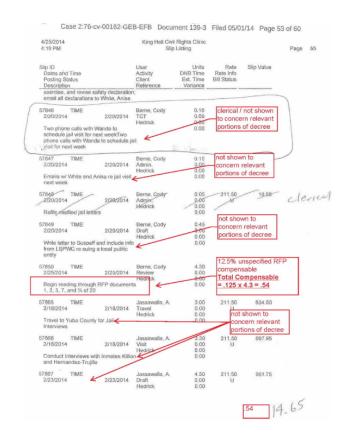


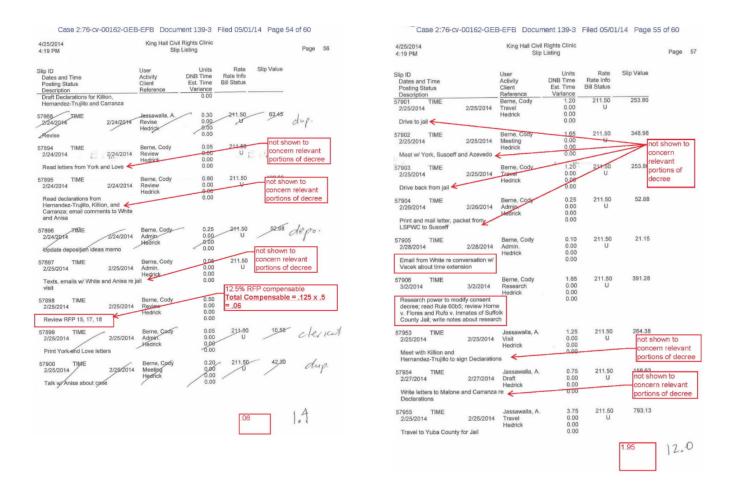


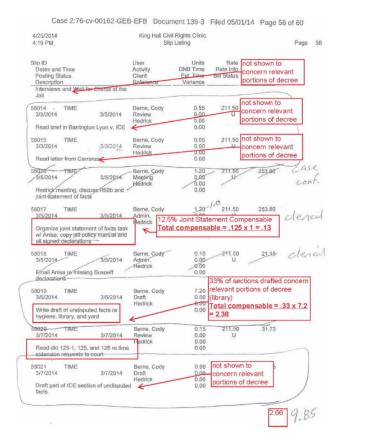


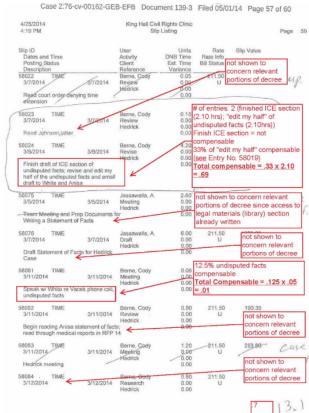


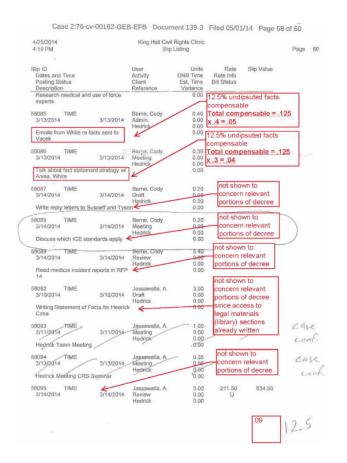




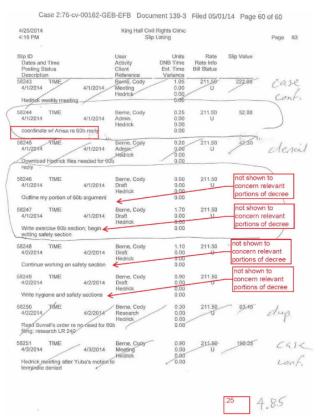








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All Citations

Not Reported in F.Supp.3d, 2014 WL 4425816

Footnotes

- The referenced Order is not in the Court's filing system since it has been archived, and the nature thereof has not been disputed.
- Plaintiffs also argue that "in issuing a preliminary injunction [in 1976] ... the Court found that conditions of confinement at the Jail violated the Constitution," and therefore "fees may be awarded in proportion to the relief granted." (Pls.' Mot. for Attorney's Fees ("Pls.' Mot."), 5:19–21, ECF No. 139.) However, the Ninth Circuit has found that prisoners are not entitled to attorney's fees under the PLRA where prisoners obtain "temporary relief ... in the form of a preliminary injunction [that] [does] not affirmatively establish that the [municipality] actually violated [the prisoners'] protected rights." *Kimbrough v.. California*, 609 F.3d 1027, 1032 (9th Cir.2010).
- Both Plaintiffs and Defendants attached an annotated version of these time sheets to their respective opening and opposition briefs. Plaintiffs' counsel crossed out certain entries not claimed to be compensable and listed at the bottom of each page the total number of hours claimed to be compensable on that page. Defendants' counsel circled entries in pen which Defendants argue are "based on clerical tasks, unnecessary research, and unnecessary billings not reasonably related to this litigation." (Defs.' Opp'n 7:5–6.). Since the annotated time sheets attached to Defendants' opposition brief exclude certain pages of time sheets attached to Plaintiffs' opening brief, the Court created Appendix 1 by inserting the referenced excluded pages into the time sheets attached to Defendants'

opposition brief.

The Court has used computer software to insert red markings to show whether certain time sheet entries are compensable. Those entries inside a red rectangular box are compensable. Where tasks are block-billed and only a certain percentage of the block-billed tasks are compensable, an explanation of which hours were deducted is inside a red rectangular box with an arrow pointing to the relevant entry. The total number compensable hours within each box is rounded to the nearest hundredth. When an entry is not compensable, an explanation of why the entry is not compensable is inside a red rectangular box with an arrow pointing to the entry. Finally, at the bottom of each page the total number of hours awarded on that page is inside a red box.

- Plaintiffs do not submit time sheets concerning their counsel's work. The time sheets submitted by Plaintiffs only record law student hours. However, Plaintiffs seek compensation for their counsel's service when he accompanied law students on visits to the jail and revised certain court-filed documents. Therefore, the dates on which Plaintiffs' counsel performed these tasks is determined by using the student time sheets and the case docket.
- Plaintiffs argue that a rate of \$141 should serve as the baseline rate since the Honorable Julia S. Gibbons, Chair of the Committee on the Budget of the Judicial Conference of the United States, testified before a Congressional subcommittee that: "[The Judicial Conference] request[s] [Congress] ... to increase the ... [CJA] rate to the statutorily authorized rate of \$141 per hour, effective January 1, 2011." Statement of Honorable Julia S. Gibbons, Chair Committee on the Budget of the Judicial Conference of the United States before the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the United States House of Representatives, March 18, 2010, at 13, available at http://www.uscourts.gov/News /Viewer.aspx?doc=/uscourts/News/2010/docs/Judge _Gibbons_Judicial_Conference.pdf. "However, [P]laintiffs do not explain how Congressional testimony, even from Judge Gibbons, could override the official, published determination of the Judicial Conference itself[,]" set forth in the Guide to Judiciary Policy. Gilman, 2014 WL 3735401, at *3. Therefore, Plaintiffs have not shown that they are entitled to a PLRA baseline rate of \$141.