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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CYNTHIA CAMPBELL and SANDY GONZALEZ on behalf of themselves and all others similarly situated, MONIQUE CASTILLO, CECIBEL CARIDAD ORTIZ, and MARK TRACE,

Petitioners/Plaintiffs,

vs.

DON BARNES, in his official capacity as Sheriff of Orange County, California,

Respondent.

Case No. 30-2020-01141117-CU-WM-CXC

Assigned for All Purposes:
Judge Peter Wilson

CLASS ACTION **CX-102**

NOTICE OF RULING ON MOTION FOR AN AWARD OF ATTORNEYS' FEES

Judge: Hon. Peter Wilson
Dept.: CX102

Petition Filed: June 2, 2020

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ATTORNEYS FOR PETITIONERS/PLAINTIFFS

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 20, 2022, the Honorable Peter Wilson entered an Order granting Petitioners Cynthia Campbell, Sandy Gonzalez, Monique Castillo, Cecibel Caridad Ortiz, and Mark Trace's motion for an award of attorneys' fees. The Court concluded that Petitioners are the prevailing parties, and awarded them a total of $2,974,082 in fees. A true and correct copy of the Order is attached hereto as Exhibit A. A true and correct formatted[1] copy of the text of the Court's tentative ruling, reflecting the Court's reasoning in granting Petitioners' fees, is attached hereto as Exhibit B.

DATED: February 1, 2022

MUNGER, TOLLES & OLSON LLP

By: */s/ Sara A. McDermott*
SARA A. MCDERMOTT
Attorneys for PETITIONERS/PLAINTIFFS

[1] Counsel for Petitioners downloaded the text of the ruling from the Court's website on January 20, 2022, and a staff member working under the direction of Petitioners' counsel formatted it, unchanged, into the attached exhibit.

EXHIBIT A

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vs.

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Respondent.

Case No. 30-2020-01141117-CU-WM-CXC

Assigned for All Purposes:
Judge Peter Wilson

CLASS ACTION **CX-102**

ORDER GRANTING PETITIONERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES

Judge: Hon. Peter Wilson
Dept.: CX102

Petition Filed: June 2, 2020

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ATTORNEYS FOR PETITIONERS/PLAINTIFFS

ORDER

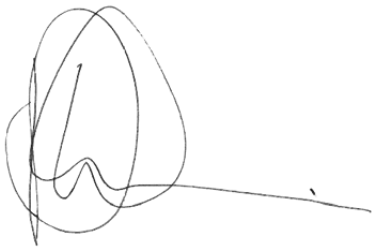
After considering the evidence and the points and authorities submitted by the parties in relation to Petitioners' Motion for Attorneys' Fees in the above-entitled matter, and the arguments of counsel at the hearing hereon, and as also set forth in the Court's January 20, 2022 Minute Order, the Court finds:

1. Petitioners are the "successful party" in this action within the meaning of Section § 1021.5 of the California Code of Civil Procedure;
2. Petitioners' action enforced an important public right and resulted in a significant benefit to numerous people;
3. Private enforcement of the right was necessary, and Petitioners did not obtain a pecuniary benefit from the litigation;
4. Petitioners' fees as awarded are reasonable in light of the complexity and pace of the litigation and the billing judgment exercised.

Accordingly, it is ORDERED that Petitioners shall recover from Respondent reasonable attorneys' fees in the amount of $2,974,082.

IT IS SO ORDERED.

DATED: **January 20, 2022**



Hon. Peter Wilson
Orange County Superior Court Judge

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CYNTHIA CAMPBELL and SANDY GONZALEZ on behalf of themselves and all others similarly situated, MONIQUE CASTILLO, CECIBEL CARIDAD ORTIZ, and MARK TRACE,

Petitioners/Plaintiffs,

vs.

DON BARNES, in his official capacity as Sheriff of Orange County, California,

Respondent.

Case No. 30-2020-01141117-CU-WM-CXC

Assigned for All Purposes:
Judge Peter Wilson

CLASS ACTION **CX-102**

[TENTATIVE] ORDER GRANTING PETITIONERS' REQUEST FOR ATTORNEYS' FEES

Judge: Hon. Peter Wilson
Dept.: CX102

Petition Filed: June 2, 2020

Petitioners/Plaintiffs seek to recover attorney fees in the amount of $4,000,314 pursuant to the Court's inherent equitable power to award fees under the "private attorney general" doctrine, CCP §1021.5.

For the reasons stated herein, the Court grants Petitioners' request for attorney fees in the amount of $2,974,082.

Objections: Respondent objects to the ROA 627, Supp. McDermott Declaration and ROA 625, Supp. Pearl Declaration.

The Court OVERRULES the Objection No. 1 to the entirety of the Supp. McDermott Declaration and Objection Nos. 2-6 [the same arguments were discussed in the moving papers and/or petitioners are supplementing their request for fees with the additional time spent on the Reply] and SUSTAINS Objection No. 7 [how much Attorney Teshuva is expected to bill is speculation].

The Court SUSTAINS the Objection Nos. 8 to the entirety of the Supp. Pearl Declaration since it constitutes improper new evidence.

Petitioners Have Met the Statutory Requirements for Attorneys' Fees under CCP § 1021.5. The purpose of CCP § 1021.5 is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1289; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 556.) Under CCP § 1021.5, the court has the power to award attorney fees to a successful party "resulting in enforcement of an important right affecting the public interest" where (1) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large number of persons; (2) the necessary and financial burdens of private enforcement are such as to make a fee award appropriate; and (3) the interests of justice require that such fees by paid by the opposing parties rather than out of any recovery obtained in the litigation. (Code Civ. Proc. § 1021.5; *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214 and fn. 2; *Vasquez v. State of Calif.* (2008) 45 Cal.4th 243, 250-251.)

Petitioners contend that they have met the statutory criteria for private attorney general fees and assert that habeas and mandate petitioners have been found entitled to fees under CCP

§ 1021.5. (*In re Head* (1986) 42 Cal.3d 223, 232 [fees under CCP § 1021.5 are available to counsel who initiate proceedings on behalf of inmates to enforce or vindicate their rights].) The Court agrees.

As Petitioners correctly point out, this Court has already determined that Petitioners are the prevailing party. *See* ROA 582, Ex. A. "Prevailing party" is synonymous with "successful" party under CCP § 1021.5. (*Save Our Heritage Org. v. City of San Diego* (2017) 11 Cal.App.5th 154, 160.) Petitioners were successful parties who achieved their litigation goals of vindicating their constitutional and statutory rights and the rights of other inmates, including disabled inmates. (*See Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 939 [vindication of a fundamental constitutional right or statutory policy confers a significant benefit for purposes of the private attorney general doctrine].) There is no question that the private enforcement of Petitioners' rights was necessary. (*Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 1366 [when an action is brought against the only ageny that has responsibility for complying with a constitutional or statutory right, the necessity of a private action is manifest]; S*an Diego Municipal Employees Ass'n v. City of San Diego* (2016) 244 Cal.App.4th 906, 913 [when there is no governmental agency available to challenge the official action, the necessity of private enforcement is obvious].)

Further, Petitioners did not seek any monetary relief and had no personal financial stake in this litigation. As such, there were insufficient financial incentives to justify the litigation in economic terms. (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 307, 309.)

Significantly, Respondent does not challenge Petitioners on this point; rather, Respondent's opposition is limited to the reasonableness of the amount of the attorney fees requested. Thus, Respondent concedes that Petitioners meet the statutory criteria for the entitlement of fees under CCP § 1021.5. (*Ghory v. Al-Lahham* (1989) 209 Cal.App.3d 1487, 1492; *Marino v. Countrywide Financial Corp.* (C.D. Cal. 2014) 26 F.Supp.3d 955, 963, fn. 5; *Horton v. Neostrata Co.* (S.D. Cal. Mar. 8, 2017) 2017 WL 932178 at p. *6 ["the Court may take Plaintiffs' failure to dispute these issues as an admission of Defendant[]'s arguments"].)

The Reasonableness of the Fees Requested. The analysis of attorney fees "begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.' The court tabulates the attorney fee touchstone, or lodestar, by multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work. '[T]he lodestar figure may be increased or decreased depending on a variety of factors, including the contingent nature of the fee award.' … '[A]bsent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee' [but that] ' "padding" in the form of inefficient or duplicative efforts is not subject to compensation.' " (*Christian Rsch. Inst. v. Alnor* (2008) 165 Cal. App. 4th 1315, 1321, citations omitted.)

Whether to award fees under CCP § 1021.5 and the amount of any award is within the court's discretion. (*Flannery v. California Highway Pa*trol (1998) 61 Cal.App.4th 629, 634.) But the discretion to deny fees is limited. (*Lyons v. Chinese Hospital Ass'n* (2006) 136 Cal.App.4th 1331, 1344.) A party meeting the statutory requirements under CCP § 1021.5 is entitled to fees "unless special circumstances would render … an award unjust." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 633.)

Here, Respondent argues that Petitioners' request for fees is so excessive and inflated as to be unreasonable, justifying the complete denial of the requested fees. The Court disagrees.

Respondent relies on *Guillory v. Hill* (2019) 36 Cal.App.5th 802 to support his argument that a fee award should be denied in its entirety. ROA 617, opp., at p. 2:21. The facts in *Guillory* are inapposite. In *Guillory*, the entire fee request was properly denied because the 392-page fee motion failed to include "a single declaration or chart that clearly and concisely sets forth the number of hours billed, the hourly rates, and the amount requested for attorney's fees" and required the trial court to calculate the total amount of fees sought by two different firms. (*Id*. at 812-813.) Importantly, the billing records included, among other things, entries that related to dismissed parties, unsuccessful plaintiffs, unsuccessful theories, work that was unconnected to the litigation, and clerical work, and reflected a lack of effort to "cull time not reasonably incurred.

(*Id*. at 813-814.) Since plaintiffs obtained only a minimal award of less than $5,400 when they sought over $1 million in damages and almost $3.8 million in attorney fees supported by "obfuscating and questionable billing records", the court properly exercised its discretion to deny any award of fees. (*Id*. at 812, 814-815.)

In contrast to *Guillory*, Petitioners in this case made considerable efforts to explain the work entailed in this matter, and summarized the fees based on phases of the litigation, billing person, hourly rate, number of hours and the total amount billed. *See* ROA 588, Krielkamp Decl.; ROA 596, Subbs Decl.; ROA 586, McDermott Decl.; ROA 598, Kendrick Decl.; ROA 590 Decl., Hoffman Decl. Petitioners' supporting evidence show that although the total fees requested are high, this was a complex matter with novel issues of law and fact and due to the compressed scheduled, a team of attorneys, paralegals and investigators was necessary to adequately investigate this matter, prepare the pleadings and motions, conduct discovery, and attend depositions and the hearings in this matter.

Further, Petitioners exercised billing judgment by writing off approximately $1 million in fees, including all fees incurred by billing entities who worked less than 50 hours on this matter, excluding fees incurred in connection with opposing Respondent's writ of mandate and other smaller items, withdrawing certain billing errors, and reducing the amount of fees requested by 20% across the board to account for duplication. ROA 586, McDermott Decl., at ¶¶5-14, 23. Petitioners also have not sought a multiplier.

Moreover, as explained in *Guillory*, a key factor in determining whether the fees are so inflated as to be unreasonable is the level of success achieved by the claimant in the litigation. Here, Petitioners successfully achieved their primary litigation goals. Given these circumstances, the amount of the requested fees is clearly not so excessive or inflated as to justify a complete denial of fees.

Respondent argues in the alternative that if fees are to be awarded to Petitioners (1) the fee award should be reduced in proportion to Petitioners' success on the claims asserted, (2) the hourly rates of Petitioners' counsel should be reduced because they are double the prevailing

market rates, (3) certain specific fees should be denied because they are excessive, duplicative and unreasonable or contrary to the law.

The Court May Reduce the Award of Fees Based on Petitioners' Degree of Success. Although attorney fees are not reduced when a plaintiff prevails on only one of several factually related and closely intertwined claims, a reduced fee award is appropriate when the prevailing party achieves only "limited success". (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 287 Cal.Rptr.3d 229, 251-252; *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989-990.)

> In evaluating the impact "limited success" has on an award of attorney's fees, we apply the two-step test outlined in *Hensley v. Eckerhart* (1983) 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (*Hensley*). (*Environmental Protection*, *supra*, 190 Cal.App.4th at p. 238, 118 Cal.Rptr.3d 352.) We first evaluate "whether 'the plaintiff fail[ed] to prevail on claims that were unrelated to the claims on which he [or she] succeeded[.]' " (*Environmental Protection*, at p. 239, 118 Cal.Rptr.3d 352.) "Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." (*Hensley*, at p. 440, 103 S.Ct. 1933.) If the court finds that successful and unsuccessful claims are related, "the court proceeds to the second step of [the] *Hensley* inquiry, which asks whether 'the plaintiff achieve[d] a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award.' " (*Environmental Protection*, at p. 239, 118 Cal.Rptr.3d 352.) "Where a plaintiff has obtained excellent results, his [or her] attorney should recover a fully compensatory fee." (*Hensley*, at p. 435, 103 S.Ct. 1933.) "There is no precise formula for making these determinations .... The court necessarily has discretion in making this equitable judgment." (*Id*. at pp. 436–437, 103 S.Ct. 1933.)

(*Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 287 Cal. Rptr. 3d 229, 252.)

Respondent has not demonstrated that any of the issues Petitioners lost on were unrelated to the claims on which they succeeded. Indeed, all of the issues Respondent identifies and the claims that were dismissed were related and intertwined with the claims on which Petitioners prevailed.

As previously discussed, this Court has already found that Petitioners succeeded in achieving their primary litigation objectives. Nevertheless, Respondent argues Petitioners only achieved limited success since the Court denied their requests for an expert, monitor or special master to oversee Respondent's administration of the jail, denied a second jail inspection, "never"

granted Petitioners' request for a 50% population reduction and did not issue any remedial orders sought by Petitioners. Opp., at p. 3:14-21.

The actual events in this case show otherwise. While the Court did not appoint an expert, monitor or special master and declined to make any further remedial orders, this was due to Respondent changing his policies and procedures as a result of the Court's 12/11/2021 Order on the Writ of Habeas Corpus and Writ of Mandate. *See also*, ROA 578, 9/2/21 Minute Order, pp. 3-4 [examples of changes Respondent made include expanding the release criteria to substantially comply with 12/11/20 Order to reduce inmate population in congregate areas and increasing the medically vulnerable inmates eligible for release]. Because Petitioners' prevailed on the writs of habeas corpus and mandate, and subsequently vigorously advocated for a special master, Respondents took the necessary steps to reduce the population and implement other safety measures, to avoid continuous oversight and further remedial measures by the neutral third party. Additionally, the Court continued to oversee Respondent's progress in reducing the inmate population and only when the Court was satisfied with Respondent's continued substantial compliance for several months did the Court determine no further oversight was needed. Based on the history of this case, the Court concludes that Petitioners' initial success on the habeas and mandate claims, subsequent zealous advocacy to ensure that Respondent complied with the Court's 12/11/20 Order, and Petitioners' investigation of the then-current conditions of the jail are all factually related and intertwined even though Petitioners were not successful on every issue.

Moreover, Petitioners' success affected all inmates, as well as officers and visitors at the jail, and the general population.

For these reasons, the Court declines to reduce the fee award because Petitioners were not successful on each of their claims.

Petitioners Are Only Entitled to Reasonable Hourly Rates. " '[A] reasonable hourly rate is the product of a multiplicity of factors .... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1003–1004, 185 Cal.Rptr. 145,

quoting *Copeland v. Marshall* (D.C.Cir.1980) 641 F.2d 880, 892.)" (*Mountjoy v. Bank of Am.*, N.A. (2016) 245 Cal. App. 4th 266, 272.)

> Generally, in calculating the lodestar, "[t]he reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, supra*, 22 Cal.4th at p. 1095, 95 Cal.Rptr.2d 198, 997 P.2d 511.) However, in the "unusual circumstance" that local counsel is unavailable a trial court may consider out-of-town counsel's higher rates. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399, 33 Cal.Rptr.3d 644 (*Horsford*).) Nevertheless, the use of the higher rates for out-of-town counsel requires a sufficient showing that hiring local counsel was impracticable. (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244, 66 Cal.Rptr.3d 680.) A plaintiff must at least make " 'a good-faith effort to find local counsel.' " (*Horsford, supra*, 132 Cal.App.4th at p. 399, 33 Cal.Rptr.3d 644.)

(*Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal. App. 4th 1223, 1241.)

The attorney is also entitled to compensation for the time expended in litigating the fee award. (*Graham v. DaimlerChrysler Corp., supra*, 34 Cal.4th at 580-584.)

The ACLU attorneys' rates range from $880 for a 4-year attorney (as of 2021) to $1,210 for a 21-year attorney. ROA 598, Kendrick Decl., at ¶10. The ACLU also charges $475 for its senior investigators, one of whom is a licensed attorney in California. *Id*. at ¶10; ROA 596, Stubbs Decl., Ex. 14, Jacob Reisberg Resume.

The MTO attorneys' rates range from $1,210 for an 18-year attorney to $805 for a 3-year attorney. MTO also charges between $540-$570 for an automated litigation analyst, $420-$475 for a paralegal and $145 for a litigation analyst. ROA 594, Pearl Decl., at ¶14.

SSHZ charged $1,000 for a 45-year attorney and $450 for a 5-year attorney. ROA 594, Pearl Decl., ¶14.

Based on the Court's experience, the hourly rates claimed for the ACLU and MTO attorneys who have practiced less than 15 years are unreasonable and not sufficiently supported. *See* ROA 594, Pearl Decl., at ¶¶19-21 and Exs. 4-5.

The rates for Attorney Stubbs, Kendrick and Kupers are on the high end, but are not unreasonable given the complex and novel issues in this case, the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, experience and qualifications. However, the less senior ACLU attorneys' rates are unreasonable. The Court reduces the hourly rates as follows:

- Attorney Takei (14-year attorney) $950
- Attorney Hinger (12-year attorney) $900
- Attorney Brennan-Krohn (6-year attorney) $750
- Attorney Ensign (5-year attorney) $700
- Attorney Spera (4-year attorney) $650

Attorneys Trivedi and Becker are not licensed in California or admitted *pro hac vice*. The lodestar cannot include attorney fees for work performed on behalf of California clients by out-of-state attorneys who were not members of the California Bar or admitted to practice law on a pro hac vice basis; otherwise, the out-of-state attorney would receive compensation for the unauthorized practice of law. (*Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1255.)

Petitioners argue that they may recover Attorney Trivedi's fees since Attorney Trivedi would have been admitted pro hac vice based on *Stathakos v. Columbia Sportswear Company (N.D. Cal.)* 2018 WL 1710075, *6. Reply, at p. 12:1-4. However, *Stathakos* is not binding authority and is contrary to *Golba*. Petitioners may not recover for work performed by Attorneys Trivedi and Becker.

The Court also finds that the ACLU investigator rates are excessive and unreasonable. While Attorney Reisberg is a licensed California attorney, the ACLU classifies him as a senior investigator. Since Reisberg and Ramirez, who is not an attorney, are classified as senior investigators and appear to handle the same tasks it appears that the hourly rate of $475 is excessive and unreasonable. Petitioners provide no information to justify this hourly rate. The Court reduces Reisberg's and Ramirez's hourly rate to $250, which is more in line with a reasonable hourly rate for paralegals.

Except for Attorney Kreilkamp, the rates for the MTO attorneys are unreasonable. Of the MTO attorneys, Attorney Krielkamp is the only partner and he is the only one with over 10 years of experience. Accordingly, the Court reduces the rates as follows:

- Attorney Kim (8 year attorney) $850
- Attorney Templeton (6 year attorney) $750
- Attorney McDermott (6 year attorney) $750
- Attorney Nielson (5 year attorney) $700
- Attorney Hylas (4 year attorney) $650
- Attorney Gray (4 year attorney) $650
- Attorney Teshuva (3-year attorney) $550

There is no information on the qualifications or experience of the non-attorney billing individuals for MTO, or how their positions differ. Accordingly, the Court reduces the hourly rates of non-attorney billers Bales, Berry, Carr, Law and Polon to the reasonable rate of $250. The Court finds the hourly rate of $145 for non-attorney billers Rawlings and Schafer to be reasonable. Likewise, there is no information on librarians, Chan and Villero, and the Court declines to award any fees for their services.

The Court finds SSHZ's hourly rates to be reasonable.

I.
PETITIONERS ARE ONLY ENTITLED TO COMPENSATION FOR HOURS REASONABLY SPENT.

1. Excessive Staffing and Duplication of Fees

Respondent argues Petitioners' bills are inflated, excessive and unreasonable. Respondent points out there were 21 attorneys, 4 paralegals, 5 investigators, 4 litigation analysts and 2 librarians billing in this matter, and argues the staffing was excessive and resulted in duplication of work and billing. ROA 619, Watson Decl., ¶¶1 and 2. Respondent has a point.

It is undisputed that because of the number of people working on this matter, there was some duplication. Specifically, multiple attorneys participated in hearings, depositions, and team calls, and worked on the pleadings and briefings. However, Petitioners explain that the team calls were necessary and integral to their strategic planning, and that the compressed scheduled, and the number and complexity of the legal issues involved required the participation of multiple attorneys to prepare discovery and conduct depositions, conduct a proper investigation of the current

conditions and support Petitioners' allegations, and to draft and respond to pleadings and motions. E.g., ROA 588, Kreilkamp Decl., at ¶¶13, 17-21, 68, 70, 86. Further, because of the compressed schedule and the need for current information on the conditions of the jail, additional attorneys were added to the team to assist in fact-finding and discovery and to coordinate the investigation with the parallel federal case. Kreilkamp Decl., at ¶¶25-32. Respondent was resistant to Petitioners' efforts to obtain discovery, a site inspection and interviews with inmates, resulting in motion work, the expansion of the hotline and outreach to obtain support for the Denial. Kreilkamp Decl., at ¶32-43.

Petitioners contend that the complexity and compact schedule of this matter required the number of individuals working on this case, but they also concede that this resulted in some duplication of work, and therefore applied a 20% reduction to the fees incurred.

The Court agrees that a 20% reduction is appropriate for excessive staffing and duplication.

2. Hotline

Respondent also contends that Petitioners seek an excessive amount of time for the hotline and that it was unreasonable to staff the hotline with attorneys at partner rates. In particular, Respondent takes issues with Attorneys Ensign, Becker and Teshuva monitoring the call center and argues that their rates were excessive and should be reduced because this is an administrative function.

Petitioners contend the hotline was necessary for fact investigation, which supported the Petition and Amended Petition and Denial. Stubbs Decl., ¶22. Additionally, while the hotline was staffed with attorneys, investigators and law students, Petitioners contend that the time spent by law students and salaried employees of ACLU Southern California, who did not habitually track their time, are not included in the fee request. Stubbs Decl., ¶22. But the precise amount of these fees that Petitioners have elected to forego is not provided.

The Court declines to reduce the hours for the hotline. As discussed above, the hourly rates for Attorneys Ensign and Teshuva have already been reduced, and no fees will be recovered for Attorney Becker. Additionally, Petitioners have explained how crucial the hotline was for

their fact investigation and why it was necessary for attorneys to supervise the hotline. And as discussed, Petitioners have already written off time for the hotline. Therefore, the Court declines to further deduct any time for the hotline.

3. Pre-Complaint Work

Respondent challenges fees Petitioners seek to recover for work prior to the filing of the complaint and points out that the parallel federal action was filed earlier.

However, a fee award may include pre-complaint litigation activity so long as the applicant can meet the "heavier burden of demonstrating how that activity contributed to the success of the litigation." (*Comm'n of City of Escondido* (2007) 157 Cal.App.4th 1358, 1370.) Here, Petitioners contend their investigation of the conditions in the jail began in the spring of 2020. ROA 596, Stubbs Decl., ¶3. Petitioners established the hotline in April 2020. *Id*., at ¶4. A substantial amount of work was necessary in order to support the allegations in the complaint and establish an extensive record of the current conditions at the jail, which included collecting and synthesizing expert reports, declarations of incarcerated individuals and other evidence. *Id*., at ¶¶9-11. This work was undoubtedly necessary and relevant since the parties waived the right to an evidentiary hearing and the Court rendered its decision on the writ of habeas corpus and mandate based on the initial pleadings in this case, including the petition and supporting evidence. ROA 288, Order, at pp. 1, 3.

The court also has discretion to include work performed by the prevailing party in a collateral or ancillary action "closely related to the action in which fees are sought and useful to its resolution." By way of example, a prevailing party may recover fees in a federal action between the same parties that materially contributed to the resolution of issues in the state court action. (*Children's Hosp. & Med. Ctr. V. Bonta* (2002) 97 Cal.App.4th 740, 775-781.) It is undisputed that the parties entered into a discovery-sharing agreement allowing Petitioners to rely on discovery in the parallel federal action in this case. The discovery and depositions in the federal action were helpful and used in this litigation to update the Court on the current conditions in the jail and in the evidentiary hearing related the potential release plan. Stubbs Decl., ¶15.

4. Block Billing, Vague Billing, Billing Errors

"Block billing" is a time-keeping method in which attorneys and legal assistants record the total daily time spent on a case rather than itemizing the time spent on specific matters. (*Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 945 fn. 2; *Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 279 ["[b]lock billing occurs when a block of time [is assigned] to multiple tasks rather than itemizing the time spent on each task".) Block billing is "not objectionable per se" but it may obscure "the nature of some of the work claimed …" due to being vague and affect the attorney's credibility. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325; *Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 695 ["[b]lock billing presents a particular problem for a court seeking to allocate between reimbursable and unreimbursable fees, and the trial courts are granted discretion to penalize [block billing] when the practice prevents them from discerning which tasks are compensable and which are not"].) Thus, block billing may provide reasonable grounds to discount the attorney's fee request and is particularly problematic when there is a need to separate work that qualifies for compensation under CCP § 1021.5 from that does not. (*Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 829-830; *Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1010 [judges have discretion to penalize block billing when this practice prevents them from discerning which tasks are compensable and which are not].)

Respondent has pointed out examples of block billing that do support his claim that the billing may be excessive or inflated. ROA 621, Jardini, Ex. K. Block billing may have led to inflated fees. For example, Attorney Templeton block-billed, and in Phase 3, which is only 41 days, he billed 454.8 hours. This means he billed, on average, approximately 11 hours for each of those 41 days. ROA 586, McDermott Decl., ¶19.

Respondent also points out vague billing entries. ROA 619, Watson Decl., ¶¶40-57. Most of these have the description of "hotline shift" or "staff hotline". E.g., ROA 619, Watson Decl., ¶¶40, 43. The Court finds that these descriptions are adequate, particularly since Petitioners' supporting declarations describe the work related to the hotline. ROA 588, Krielkamp Decl., ¶¶37-43; ROA 596, Stubbs Decl., ¶¶4, 9-10, 22, 23.

Further, and notwithstanding the block billing, the Court finds that the 20% discount already applied by Petitioners, and their election not to seek fees for billers under 50 hours, adequately compensates for possible lack of transparency in these entries.

Regarding billing errors, Petitioners have addressed those, and are not seeking the erroneous amounts, as explained in their Reply.

II.
CONCLUSION

The Court grants attorney fees of $2,974,082 based on the lodestar amounts adjusted for the hourly rates noted above.

Petitioners are ordered to give notice.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, California. My business address is 350 S. Grand Ave., Floor 50, Los Angeles, CA 90071.

On February 1, 2022, I served true copies of the following document(s) described as:

NOTICE OF RULING ON MOTION FOR AN AWARD OF ATTORNEYS' FEES

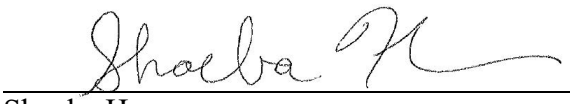
on the interested parties in this action as follows:

[SEE ATTACHED SERVICE LIST]

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List via email from shoeba.hassan@mto.com.

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

Executed on February 1, 2022, at Los Angeles, California.



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