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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LAUREN M. CRUZ, by her next friend Jean Cruz; VALERIE HERRERA, by her next friend Carolina Herrera; JENNIFER N. CERROS; CATHERINE GREMPEL, by her next friend Tina Grempel, individually and on behalf of all those similarly situated,

Plaintiffs,

vs.

ALHAMBRA SCHOOL DISTRICT; THE CITY OF ALHAMBRA; RUSSELL LEE-SUNG, VICTOR SANDOVAL, LOU TORRES, WILLIAM A. VALLEJOS, JOHN H. NUÑEZ, ROBERT L. GIN, RUTH E. CASTRO, and BARBARA A. MESSINA, in their official capacities,

Defendants.

CASE NO. CV 04-1460 DT (Mcx)

ORDER **GRANTING IN PART** PLAINTIFFS' MOTION FOR REASONABLE ATTORNEYS' FEES AND COSTS

## I. BACKGROUND

### A. Factual Summary

Because the parties are generally familiar with the factual and procedural history of this case, the Court does not recount them here except as necessary to explain its decision in response to the issues raised herein. Plaintiffs Lauren M. Cruz ("Cruz"), Valerie Herrera ("Herrera"), Jennifer N. Cerros ("Cerros"), Catherine Grempel ("Grempel"), and all others similarly situated

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(collectively "Plaintiffs")[1] brought this class action pursuant to Federal Rule of Civil Procedure ("Rule") 23(a) and (b)(2) for injunctive relief against defendants Alhambra School District (the "School District"), School District employees Russell Lee-Sung ("Lee-Sung"), Victor Sandoval ("Sandoval"), Lou Torres ("Torres"), William A. Vallejos ("Vallejos"), John H. Nuñez ("Nuñez"), Robert L. Gin ("Gin"), Ruth E. Castro ("Castro"), and Barbara A. Messina ("Messina") (collectively, "School District Defendants"), and the City of Alhambra (the "City") (all defendants collectively known as "Defendants") for unlawful sex discrimination against female student athletes at Alhambra High School ("AHS") pursuant to Title IX of the Education Amendments of 1972, the United States Constitution, the California Constitution, and California state anti-discrimination laws.[2]

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[1]As of the date the Complaint was filed on March 4, 2004: Plaintiff Cruz was a 15-year-old female who played softball as an Alhambra High School ("AHS") student, and proceeds in this action by her next friend, her mother, Jean Cruz; Plaintiff Herrera was a 17-year-old female who played softball as an AHS student, and proceeds in this action by her next friend, her mother, Carolina Herrera; Plaintiff Cerros was an 18-year-old female who played basketball as an AHS student; and Plaintiff Grempel was a 14-year-old female who proceeds in this action by her next friend, her mother, Tina Grempel. Complaint, ¶¶ 11-14. At the time the Complaint was filed, Grempel attended Emory Park School in Alhambra, California; however, she was to attend AHS starting Fall 2004, and intended to play softball and track and field as an AHS student. Id. at ¶ 14. According to Plaintiffs, Grempel now attends AHS. The First Amended Complaint reflects the identical information with respect to these plaintiffs.

[2] Plaintiffs rely on the following statutes: Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, et seq. and its interpreting regulations; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as enforced through 42 U.S.C. § 1983; the California Constitution, Article 1, § 7; California Education Code §§ 230 et seq.; and California Government Code §§ 11135 and 53080. Plaintiffs request Declaratory and all



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1 The class was certified on October 4, 2004. After more than 1 year
2 of mediation and negotiation with the assistance of the Court, the parties reached a
3 resolution of all claims, which is memorialized in two settlement agreements – an
4 agreement between Plaintiffs and School District Defendants entitled Joint
5 Resolution Agreement and Order for Continuing Court Jurisdiction (hereinafter
6 "Joint Resolution Agreement"), and an agreement between Plaintiffs and the City
7 entitled Settlement Agreement Between Plaintiffs and defendant City of
8 Alhambra.

9 On December 19, 2005, the Court preliminarily approved these
10 settlements, including the form of notice. Notice was achieved by December 23,
11 2005, including a distribution of more than 3,000 copies to AHS students on
12 December 21, 2005. On January 9, 2006, Plaintiffs, on behalf of themselves and
13 the certified Class, together with School District Defendants and defendant City,
14 jointly sought from this Court the entry of an Order pursuant to Federal Rule of
15 Civil Procedure 23 for final approval of the settlements as fair, reasonable, and
16 adequate. On January 31, 2006, this Court granted the parties' Joint Motion For
17 Final Approval Of Class Action Settlements.[3]

18 Presently before this Court is Plaintiffs' Motion for Reasonable
19 Attorneys' Fees and Costs.

20 **II. DISCUSSION**

21 **A. *Standard For Attorneys' Fees***

22 1. *The "American Rule"*

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24 other relief authorized pursuant to 28 U.S.C. §§ 2201 and 2202.

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26 [3]As a result of the Agreements secured by Plaintiff's counsel, School
District will spend at least $3.5 million on facilities for the class. Defendant City
27 will spend $500,000 for a total of at least $4 million.

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The well-established "American Rule" followed by the United States Supreme Court " provides that a prevailing party may not collect attorney's fees absent some statutory or contractual authorization. Fleischmann Distilling Corp. v. Majer Brewing Co., 386 U.S. 714, 717 (1967).

2. *Attorney's Fees For A Prevailing Defendant Under 42 U.S.C. §1988*

Ordinarily, a prevailing party may not collect attorney's fees. See Dogherra v. Safeway Stores Inc., 679 F.2d 1293, 1298 (9th Cir. 1982) (citing Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975). However, 42 U.S.C. § 1988 provides in relevant part that "in any action or proceeding to enforce a provision of sections . . . 42 U.S.C. §§ 1981-1983, 1985, 1986 . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . . ." 42 U.S.C. § 1988 (2003). When determining whether attorney fees are warranted, some factors for the court to consider are: "(1) the degree of success obtained; (2) frivolousness; (3) motivation; (4) reasonableness of the losing party's factual and legal arguments; and (5) the need, in particular circumstances, to advance consideration of compensation and deterrence." Ent. Res. Group, Inc. v. Genesis Creative Group, Inc., 122 F. 3d 1211, 1229 (9th Cir. 1997).

**B. *Analysis*[4]**

Presently before the Court is Plaintiffs' request for prevailing party attorney's fees in the total sum of $839,579.08. This amount reflects a lodestar of

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[4]School District Defendants and defendant City filed separate Oppositions to Plaintiffs' Motion. Because the substance of both Oppositions are substantially similar, the Court does not differentiate between these defendants' Oppositions in this Order unless necessary to pinpoint a particular argument or statement by the respective defendant.

$671,663.27 with a requested 1.25 enhancement. Plaintiffs contend that they are entitled to an award of reasonable attorneys' fees, costs and expenses pursuant to Civil Rights Attorneys' Fees Awards Act, 42 U.S.C. § 1988. For the reasons discussed below, this Court **grants in part** Plaintiff's Motion.

1. *Plaintiffs are entitled to their reasonable attorneys' fees and costs*

Plaintiffs are entitled to an award of reasonable attorneys' fees under 42 U.S.C. Section 1988.[5] Section 1988's purpose is to ensure "effective access to the judicial process for persons with civil rights grievances." Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (internal quotations and citation omitted). Thus, prevailing plaintiffs "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Id.

**a. Plaintiffs are the prevailing parties**

It is indisputable that the favorable settlements obtained by Plaintiffs qualify plaintiffs as the "prevailing" or "successful" parties in this litigation. Plaintiffs qualify as "prevailing parties" when they have achieved judicially enforceable relief that "materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." Richard S. v. Dep't of Dev. Servs., 317 F.3d 1080, 1086 (9th Cir. 2003) (quoting Barrios v. California Interscholastic Fed'n, 277 F.3d 1128, 1134 (9th Cir. 2002)). That judicially enforceable relief may be obtained by settlement: "A plaintiff 'prevails,' and thus is entitled to attorney's fees and costs, when he or she

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[5]Section 1988 reads, in relevant part, "[i]n any action or proceeding to enforce a provision of sections 1977, 1977A, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 U.S.C. §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 U.S.C. §§ 1681 *et seq.*] . . . 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).

enters into a legally enforceable settlement agreement with the defendant." Richard S., 317 F.3d at 1086 (citing Barrios, 277 F.3d at 1134).

This statutory scheme does not require a finding that plaintiffs would have prevailed on the merits had the case continued: "'Nothing in the language of § 1988 conditions the District Court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiffs' rights have been violated.'" Sablan v. Dep't of Fin. of the Commonwealth of the N. Mariana Islands, 856 F.2d 1317, 1324 (9th Cir. 1988) (quoting Maher v. Gagne, 448 U.S. 122, 129 (1980)). Rather, plaintiffs are entitled to fees if their action was "not frivolous, unreasonable or groundless." See, e.g., Sablan, 856 F.2d at 1327 (internal quotations and citation omitted).

Plaintiffs' claims were far from "frivolous, unreasonable or groundless." The parties have entered into Agreements that provide the very relief Plaintiffs sought. These Agreements are legally enforceable by this Court–which retains jurisdiction to ensure compliance with the terms of the Agreements. Therefore, plaintiffs are the prevailing parties and are entitled to reasonable attorneys' fees.



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**b. No Special Circumstances Make the Award of Fees and Costs Unjust**

Consistent with the purposes of civil rights fee-shifting statutes, the court's discretion to deny a fee award is narrow. New York Gaslight Club, Inc. v. Carey, 447 U.S. 54, 68 (1980). Courts have a great deal of discretion in granting attorney fees; however, if fees are denied in full, reasons for said denial must be articulated. Herrington v. County of Sonoma, 883 F.2d 739, 744 (9th Cir. 1989); Hensley v. Eckerhart, 461 U.S. 424 (1983). "Absent 'special circumstances,' fees should be awarded." New York Gaslight Club, at 68 (internal quotation and citations omitted). "The defendant has the burden of showing special circumstances warrant a denial of fees, (citation omitted), and the defendant's showing must be a strong one, (citation omitted)." Herrington, 883 F.2d at 744.

Here, there are no "special circumstances" that would render an award "unjust." Plaintiffs have obtained significant reforms to the policies, facilities and athletic opportunities available to the class. As such, their action squarely fits the purpose the fee-shifting statute and there is nothing "unjust" about compensating plaintiffs' counsel for their work. See, e.g., Bauer v. Sampson, 261 F.3d 775, 786 (9th Cir. 2001).

Although Defendants argue that it is unjust to award fees in a case involving a public school because such fees may send the public entity into bankruptcy, their argument is unavailing. See, e.g., Hall v. Bd. of Sch. Comm'rs, 707 F.2d 464, 465 (11th Cir. 1983); Lopez v. San Francisco Unified Sch. Dist., Case No. CV 99-03260 SI, slip op. at 4 (N.D. Cal. August 16, 2005) (Order Awarding Fees and Costs ("Lopez Order"). Defendants do not offer case law to demonstrate otherwise. "The traditionally effective remedy of fee shifting" remains necessary to advance our national interest in civil rights enforcement in school settings. McPherson v. Sch. Dist. No. 186, Springfield, Ill., 465 F. Supp.

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749, 755 (C.D. Ill. 1978) (quoting from Senate Report No. 94-1011 on section 1988) ("The greater resources available to governments provide an ample base from which fees can be awarded to the prevailing plaintiff in suits against governmental officials or entities." (internal quotation and citation omitted)).

Furthermore, financial circumstances are not a "special circumstance" justifying a denial or reduction of an otherwise reasonable fee. Schwartz & Kirklin, 1983 Litigation, § 6.8, p. 348; see also, e.g., Inmates of Allegheny County Jail v. Pierce, 716 F.2d 177, 179-80 (3d Cir. 1983) ("[t]he losing party's financial ability to pay is not a 'special circumstance,' whether that party is a public or a private agency." (internal citations omitted)).

In providing for statutory fees with no exception for public entity defendants, Congress prioritized Section 1983's enforcement and deterrence purposes. See, e.g., Burt v. Hennessey, 929 F.2d 457, 458 (9th Cir. 1991) ("In authorizing attorneys' fees for prevailing plaintiffs in civil rights suits, the Senate stated that '[i]f private citizens are able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court.'").

Upon review of the case law and the arguments presented, there are no special circumstances to make an award of attorneys' fees unjust. As such Plaintiffs are entitled to reasonable attorneys' fees.[6]

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[6]Defendants make a passing argument that Plaintiffs' attorneys' fees and costs are somehow "punitive" in nature. However, Defendants provide no legal support for their assertion, and as such, this Court finds Defendants' contention unpersuasive.

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### c. Plaintiffs' attorneys' fees and costs require a downward adjustment[7]

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The determination of the reasonableness of plaintiffs' claim for attorneys' fees begins with a determination of the lodestar, which is calculated by multiplying the reasonable hourly rates by the number of hours reasonably spent. See, e.g., Hensley, 461 U.S. at 433. The lodestar method for determining reasonable fees in civil rights cases was established in three Supreme Court decisions, Blum v. Stenson, 465 U.S. 886 (1984), Hensley v. Eckerhart, 461 U.S. 424 (1983), and Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546 (1986).

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In the instant case, Plaintiffs contend that the total lodestar is $671,663.27. See Shiu Decl. ¶¶42-43 & Exhs. C & E. This amount is based on 1,439.43 hours claimed by The Legal Aid Society Employment Law Center ("LAS-ELC") and 626.80 hours claimed by California Woman's Law Center ("CWLC"). Shiu Decl. ¶¶40-41. According to Plaintiffs, the lodestar does not include over 381 hours of compensable time deleted in the exercise of billing judgment, an almost 16 percent reduction. See Shiu Decl. ¶¶40-44. In addition, Plaintiffs request a 1.25 lodestar enhancement. Plaintiffs therefore seek a total amount for fee-related services to date, with the requested 1.25 multiplier enhancement, of $839,579.08.

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[7]To support a downward adjustment of attorneys' fees, Defendants offer the Declaration of Kenneth M. Moscaret ("Moscaret"), who Defendants maintain is an expert in the field of attorneys' fees. In response, Plaintiffs filed Objections To The Declaration of Kenneth M. Moscaret. seeking to disallow Moscaret's opinions. Because this Court did not require Moscaret's declaration to justify reducing Plaintiff's attorneys' fee award, this Court need not rule on Defendants' objections at this time.

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**1. Plaintiffs' lodestar amount is excessive**

*a. The number of hours claimed are unreasonable*

Plaintiffs are entitled to be compensated for every hour reasonably spent to vindicate their clients' interests: "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally, this will encompass all hours reasonably expended on the litigation . . . ." Hensley, 461 U.S. at 435. "[A] fee petitioner carries the burden of establishing entitlement to the compensation claimed by showing that the numbers claimed were expended reasonably." Real v. The Cont'l Group, Inc., 653 F. Supp. 736, 740 (N.D. Cal. 1987). Once the plaintiff has presented a fully-documented claim, the burden shifts to the defendants to show by specific evidence that the number of hours claimed is not reasonable. See Gates v. Gomez, 60 F.3d 525, 534 (9th Cir. 1995).

In the instant case, several factors show that the number of hours claimed is unreasonable. This Court has carefully analyzed the legitimate, actual, and reasonable attorneys' fees incurred in this matter versus what Plaintiffs contend they accrued. Upon this Court's comprehensive and intimate understanding of this case through the course of litigation, and the extensive settlement conferences conducted before this Court as between the parties, this Court finds that a 50% reduction in fees is warranted.[8]

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[8]This Court, in arriving at a 50 percent reduction in attorneys' fees, has considered and rejected Defendants' contention that Plaintiffs' fees must be reduced because Plaintiffs did not bring their concerns to the attention of the School District prior to filing this action. A review of the record strongly suggests that the School District knew of the Title IX violations long before the Complaint in this matter was filed on March 4, 2004, yet School District failed to adequately address or remedy the violations. According to Defendants, "had Plaintiffs [sic] counsel come to the School District and attempted to resolve the matter, the

As a preliminary matter, this Court acknowledges that this case was not a complex matter. Plaintiffs counsel attempt to designate this matter as a complex class action, and use this as a basis for multiple attorneys and numerous staff members to bill. This is not the case here. During the course of this action, the only motion heard was a Motion for Class Certification. Moreover, only three (3) depositions took place. This litigation does not demonstrate the markings of a complex one, whereby the Court may engage in any or all of the following: designate duties to appointed lead and liaison counsel; define designated counsel's functions early in the litigation; make a determination for the method of compensation; order that specified records be kept (including, in some cases, periodic reports in anticipation of an attorney fee award); made and establish arrangements for compensation; and establish guidelines covering staffing, hourly rates, and estimated charges. See Manual for Complex Litigation, Fourth, §§ 14.214 and 14.215 (2004). The record does not support Plaintiffs' representation that this case was complex. This determination bears directly on the hours purportedly involved in litigating this case and favors a downward adjustment of the lodestar figure.

Federal district courts in California are permitted to make "across-the-board" percentage reductions in the claimed billings in fee-shifting cases, so long as they explain the reasons why the billings are being reduced and how they arrived at those reductions. Gates v. Deukmejian, 987 F.2d 1392, 1399 (9th Cir.

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School District would have attempted to resolve the issues. *See* Declaration of Harold Standerfer, ¶ 3." (School District Opposition, 4:26-27). Defendants' conjecture does not justify a reduction of attorneys' fees. This Court disagrees with Defendants that Plaintiffs engaged in an unorthodox "tactic in not attempting to resolve the matter prior to initiating Federal Court litigation [which] speaks bounds of bad faith tactics and warrants a complete denial of an award of attorneys' fees." (School District Opposition, 5:8-11).

1992). As the Ninth Circuit has held, "Despite the 'concise but clear' requirement, in cases where a voluminous fee application is filed in exercising its billing judgment the district court is not required to set forth an hour-by-hour analysis of the fee request." Gates v. Deukmejian, 987 F.2d 1392, 1399 (9th Cir. 1992) (citing Jacobs v. Mancuso, 825 F.2d 559, 562 (1st Cir. 1987), In re "Agent Orange" Product Liab. Litig., 818 F.2d 226, 237-38 (2d Cir. 1987) ("no item-by-item accounting of the hours disallowed is necessary or desirable"), and Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc., 776 F.2d 646, 657-58 (7th Cir. 1985)). "When faced with a massive fee application the district court has the authority to make across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure 'as a practical means of trimming the fat from a fee application.'" Gates v. Deukmejian, 987 F.2d 1392, 1399 (9th Cir. 1992) (quoting New York State Ass'n for Retarded Children v. Carey, 711 F.2d 1136, 1146 (2d Cir. 1983)); Dagget v. Kimmelman, 811 F.2d 793 797-98 (3rd Cir. 1987); Tomazzoli v. Sheedy, 804 F.2d 93, 97-98 (7th Cir. 1986); Mares v. Credit Bureau of Raton, 801 F.2d 1197, 1202-03 (10th Cir. 1986) (77% reduction in hours)).

An across-the-board percentage reduction is justified. First, this litigation involved unnecessary duplication of efforts. Duplication of effort between attorneys is inappropriate and not compensable. See Harrington v. County of Sonoma, 883 F.2d 739, 747 (9th Cir. 1989). All class counsel billed time to draft, review and revise various pleadings and documents submitted in connection with this matter. Multiple attorneys appeared at the various hearings, including mediation and court appearances. For instance, at the January 31, 2005 mediation, five (5) attorneys appeared on behalf of Plaintiffs, three (3) of whom were from San Francisco. The following day, four (4) attorneys (three (3) from San Francisco) appeared at a site inspection at Alhambra High School. In the span of three days, from January 30, 2005 to February 1, 2005, Plaintiffs' counsel



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claimed fees in excess of $33,748.50, plus costs of $4,892.82. See Declaration of Gary Gibeaut, ¶¶ 8-11, and Exh. J. Plaintiffs offer no sufficient explanation as to why multiple attorneys were necessary. Plaintiffs merely contend, without adequate discussion, that this case involved "a range of difficult legal and factual issues . . . [and t]o meet these demands, a team of counsel was required, as was an efficient and effective division of responsibilities." (Reply to School District's Opposition, 18:11-13). However, in light of the low complexity of this case, this Court finds Plaintiff's representation that they "made every effort to avoid unnecessary fees" disingenuous and finds that an unnecessary duplication of resources strongly favors a reduction of fees. Democratic Party of Washington State v. Reed, 388 F.3d 1281, 1286-87 (9th Cir. 2004).

The following are only some examples of unreasonable duplication of efforts by Plaintiffs' counsel:

| Exhibit | Number of Billers | Total Hours Billed | Total Fees |
|---|---|---|---|
| H-1: Complaint | 5 | 31 hours, 52 mins. | $10, 168.43 |
| H-2 Discovery | 5 | 30 hours, 45 mins. | $8,455.26 |
| H-3: Class Certif. Stipulation | 5 | 10 hours, 32 mins. | $2,207.00 |
| H-4: Depositions | 6 | 115 hours, 18 mins. | $30,702.00 |
| H-5: Class Certif. Motion | 5 | 99 hours, 24 mins. | $32,285.00 |
| H-6: Reply re: Class Certif. Motion | 5 | 24 hours, 30 mins. | $10,740.50 |
| H-7 Mediation Stmt/Brief | 3 | 24 hours, 30 mins. | $7,387.50 |
| H-8 School District Settlement Agreement | 4 | 115 hours, 37 mins. | $41,153.40 |



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1 Upon careful review of the evidence of record, this Court finds an
2 unnecessary duplication of resources. Plaintiffs do not justify how such
3 duplicative efforts can legitimately be passed onto Defendants. Hensley v.
4 Eckerhart, 461 U.S. 424, 429 (1983) ("In the private sector, 'billing judgment' is
5 an important component in fee setting. It is no less important here. Hours that are
6 not properly billed to one's *client* also are not properly billed to one's *adversary*
7 pursuant to statutory authority.") (quoting Copeland v. Marshall, 205 U.S. App.
8 D.C., 390, 401 (1980) (en banc) (emphasis in original)). As such, a percentage
9 reduction is reasonable under the facts of this case.
10 Second, especially in light of the fact that this case is not considered a
11 complex matter, this Court finds that Plaintiffs' counsel engaged in excessive
12 inter- and intra-office conferencing. In In re Olsen, 884 F.2d 1415 (D.C. Cir.
13 1989), the Court stated:
14 The attorneys also engaged in a plethora of
15 conferences, most often denoted simply as 'strategy'
16 conferences, consuming the time of several attorneys
17 who billed at very high rates. The hourly rates
18 charged are of such magnitude as to indicate that the
19 attorneys should have been able to decide on the
20 proper strategy without the great number of strategy
21 conferences attended by numerous firm lawyers.
22 Olsen, 884 F.2d at 1429.
23 Plaintiffs contend that their "conferencing time was eminently
24 reasonable for a case of this magnitude and scope. In a case with voluminous
25 paper discovery, a number of depositions, motions practice, and intense settlement
26 discussions, conferencing is essential to achieve organization and coordination."
27 (Reply to School District's Opposition, 20:12-15). Plaintiffs overstate the
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1 magnitude and scope of this litigation. As noted above, during the course of this
2 action, only a motion for class certification was decided and only three depositions
3 were taken. Plaintiffs do not dispute the fact that the majority of hours incurred in
4 this matter were in drafting and negotiating settlement terms.
5 Plaintiffs' counsel's inter- and intra-office conferences represent
6 nearly 264 hours at a total requested amount of $84,770.22. Plaintiffs' counsel
7 provides no adequate explanation to justify the hours spent. This Court finds that
8 Plaintiffs' counsel's inter- and intra-office conferences are excessive, further
9 justifying a reduction of the lodestar amount.
10 Third, a review of Plaintiffs' counsel's invoices reveal that Plaintiffs
11 improperly request fees for certain non-billable clerical and administrative tasks
12 performed by law students and paralegals. Such tasks include filing documents,
13 making and printing bate labels, retrieving documents for attorneys, copying
14 documents, calling copy services to arrange for documents to be photocopied,
15 calendaring matters, setting up databases for "document control," delivering
16 documents, arranging conference calls, transcribing documents, and organizing
17 files. Courts have held that time spend on such tasks is not compensable.
18 Hirschey v. F.E.R.C., 777 F.2d 1, 6 (D.C. Cir. 1985) (rejecting claim for overhead
19 and secretarial expenses because it is encompassed by attorney's fee); Missouri v.
20 Jenkins by Agyei, 491 U.S. 274, 288 n.10 (1989) ("clerical or secretarial tasks
21 should not be billed at a paralegal rate, regardless of whom performs them"); see
22 also Keithe v. Volpe, 644 F. Supp. 1317 (C.D. Cal. 1986).
23 Plaintiffs' counsel has failed to eliminate non-compensable time
24 entries as well as failed to properly reduce their fees for partially billable tasks.
25 Examples of such entries are as follows:
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| Exhibit | Total Hours Billed (approx.) | Total Fees |
| --- | --- | --- |
| E-1: Non-Billable Tasks: LAS-ELC | 10 1/2 hours | $1,275.00 |
| E-2: Non-Billable Tasks | 35 1/2 hours | $4,779.50 |
| E-3: Partially Billable Tasks: LAS-ELC | 170 hours | $19,698.95 |
| E-4: Partially Billable Tasks: CWLC | 4 hours | $526.00 |

The evidence of such time entries strongly weighs in favor of reducing Plaintiffs' counsel's requested fees.

Fourth, as discussed immediately below, the hourly rates Plaintiffs' counsel requests for time expended in this case are not shown to be reasonable.

*b. Plaintiffs' counsel's rates are not proven to be reasonable*

Plaintiffs' counsel is entitled to the hourly rates that are proven to be "in line with" the rates charged by attorneys of comparable experience, expertise, and skill for comparable work. See Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). The fair market value of the work is generally determined by rates charged by commercial firms for comparable complex federal litigation. Davis v. City & County of San Francisco, 972 F.2d 1536, 1548 (9th Cir. 1992); see also City & County of San Francisco, 748 F. Supp. at 1431 (plaintiffs' attorneys entitled to rates charged by "corporate attorneys of equal caliber"); Jordan v. Multnomah County, 815 F.2d 1258, 1262 (9th Cir. 1987) ("The prevailing market rate in the community is indicative of a reasonable hourly rate.").

The Supreme Court spoke on the subject of rates in Blum v. Stenson, 465 U.S. 886 (1984):

In seeking some basis for a standard, courts have



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> required prevailing attorneys to justify the reasonableness of the requested rate or rates. To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence – in addition to those attorney's own affidavits – 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. A rate determined in this way is normally deemed to be reasonable, and is referred to – for convenience – as the prevailing market rate.

Blum, 465 U.S. at 895, n.11. A party's failure to provide evidence of prevailing legal rates in the community "leaves a court with an insufficient basis from which to conclude that the rates requested are 'reasonable.'" Southerland v. Intern. Longshoremen's and Warehouseman's Union, Local 8, 845 F.2d 796, 801 (9th Cir. 1987).

In Albion Pac. Property Res., LLC v. Seligman, 329 F. Supp.2d 1163 (N.D. Cal. 2004), the court stated:

> In sum, a reasonable attorney fee is the fee that would be charged by reasonably competent counsel, not counsel of unusual skill and experience. Reasonably competent counsel bill a reasonable number of hours at a reasonable hourly rate. A reasonably hourly rate is based on rates charged in the local community as a whole, not particular segments of the bar.

Albion, 329 F. Supp. 2d at 1169. In determining an appropriate hourly rate for a

fee application, "a particular attorney's billing rate is relevant, but not dispositive, evidence of a reasonable hourly rate." Id. Reliance on "hourly charges claimed by large, well known highly regarded law firms" to establish the hourly rate is not appropriate because the court must use the prevailing market rate which, as stated above, "is based on rates charged in the local legal community as whole, not particular segments of the bar." Id. at 1170. As the Albion Court further explained,

> the average market rate in the local legal community as a whole is a better approximation of the hourly rate that would be charged by reasonably competent counsel than the actual billing rate charged by a single attorney. Like the hypothetical "reasonably competent attorney," attorneys billing at the average rate will not be unusually skilled or experienced but [will be] attorneys typically capable of rendering the required services.

Id. An above-average hourly rate is appropriate if the "fee applicant can demonstrate that its attorneys billed fewer hours than reasonable competent counsel would have billed." Id.; Blum at 898.

An award of above-average rates in this matter would not be justified in light of the excessive time billed by counsel as demonstrated in the discussion above. In fact, in light of the apparently inefficient manner in which this case was conducted, a reduction of in Plaintiffs' claimed billing rates is appropriate. Perkins v. Mobile Housing Bd., 847 F.2d 735, 738-39 (11th Cir. 1988) ("where the court believes that the matter has not been handled efficiently, the court may reflect that fact by decreasing the hourly rate charged by the lawyers of less skills and experience.").

In this case, Plaintiffs' counsel maintains that the hourly rates requested "are quite modest in light of their significant experience, expertise, and skill." (Motion, 20:26-27). However, this Court finds insufficient evidence that the rates are, in fact, as Plaintiffs suggest. Although Plaintiffs present the sworn testimony of attorneys who handle complex federal litigation for support – Ellen Berkowitz Decl. ¶¶ 5-9; Martha Jordan Decl. ¶¶ 4-8; and Richard W. Odgers Decl. ¶¶ 4-10 – said attorneys' opinions do not justify or substantiate Plaintiffs' counsel's claim that the rates sought are "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation," especially in light of the fact that there is no showing that this case is complex. Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Moreover, the data on current average rates charged by other Los Angeles area law firms such as Manatt, Phelps & Phillips, and Loeb & Loeb, taken from The *National Law Journal's* 2005 Survey of the Nation's 250 Largest Firms, is not persuasive proof that the rates charged by Plaintiffs' counsel are reasonable. Such evidence does not demonstrate that the rates sought by Plaintiffs' counsel are comparable to those offered by other attorneys of reasonably comparable skill, experience and reputation. Finally, contrary to Plaintiffs' contentions, the fact that Plaintiffs' counsel's rates have previously been found reasonable by a district court in the Northern District of California in Lopez is not binding on this Court. In view of the evidence of record, this Court finds that the rates are not proven to be reasonable, and coupled with the fact that the hours purportedly expended by Plaintiffs' counsel in this case are demonstrable excessive, a reduction of the lodestar amount by 50 percent is warranted.

**d. Plaintiffs' requested 1.25 enhancement of the lodestar amount is not warranted**

As stated by the Supreme Court, "modifications" or "enhancements"



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to the lodestar "are proper only in certain 'rare' and 'exceptional' cases." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986). Any modification must be "supported by both specific evidence on the record and detailed findings by the lower courts that the lodestar amount is unreasonably low or unreasonably high." Van Germwen v. Guarantee Mut. Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000).

Plaintiffs do not provide sufficient evidence that an enhancement is necessary to provide fair and reasonable compensation, or that this case represents one that is rare or exceptional. Blum v. Stenson, 465 U.S. 886, 901-02 (1984). Moreover, this Court has already determined that Plaintiffs' counsel's proffered lodestar amount is unreasonably high, and thus, enhancing this lodestar amount would be inappropriate on this ground. As such, a lodestar enhancement is not warranted.

**e. Plaintiffs' Costs and Expenses are Reasonable**

Section 1988 provides for an award of costs and out-of-pocket expenses to prevailing plaintiffs. See United Steelworkers, 896 F.2d at 407; Chalmers v. City of Los Angeles, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986) ("out-of-pocket expenses incurred by an attorney which would normally be charged to a fee paying client are recoverable as attorney's fees under section 1988."). Plaintiffs' costs and out-of pocket expenses are fully recoverable. See, e.g., Lucas v. White, 63 F. Supp.2d 1046, 1063 (N.D. Cal. 1999) ("It is well-established that [out-of-pocket] costs are recoverable as part of a fee award"). These costs and expenses from April 2004 through January 3, 2006 total $24,960.08. Shiu Decl.¶¶ 36-37, 45 & Exhs. E-F.

Plaintiffs' initial disclosures detail the $24,960.08 in costs and out-of-pocket expenses incurred in this case. Shiu Decl. ¶ 37. A review of such costs indicate that "they are typically charged to paying clients by private attorneys."

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1 Davis v. City & County of San Francisco, 972 F.2d 1536, 1556 (9th Cir. 1992);
2 ("attorneys fees awards can include reimbursement for out-of-pocket expenses
3 including . . . courier and copying costs . . . ."); Harris v. Marhoefer, 24 F.3d 16,
4 19 (9th Cir. 1994) (approving award of "postage, investigator, copying costs, hotel
5 bills, meals, messenger service and employment record reproduction."). However,
6 Defendants contend, and this Court agrees, that this amount should be reduced for
7 unnecessary costs. As discussed above, Plaintiffs counsel incurred travel costs
8 and expenses by having multiple attorneys appear at various hearings, mediations
9 and matters directly related to this litigation. All such attorneys billed meals,
10 lodging and other costs that cannot reasonably be reimbursed. Upon review of
11 such expenditures, this Court finds that a 20 percent reduction in Plaintiffs'
12 counsel's requested costs is warranted. Therefore, Plaintiff's counsel is entitled to
13 costs in the total amount of $19,968.06.[9]
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26 [9]Plaintiffs' counsel's costs are reduced by $4,992.02, calculated as 20
27 percent of $24,960.08.
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## III. CONCLUSION

In light of the foregoing, this Court **GRANTS IN PART** Plaintiffs' Motion For Reasonable Attorneys' Fees And Costs. This Court's ruling reflects a 50 percent downward adjustment of Plaintiffs' counsel's requested attorneys' fees of $671,663.27,[10] and a 20 percent downward adjustment of Plaintiffs' counsel's costs of $24,960.08. Therefore, Plaintiffs are entitled to an award of attorneys' fees in the total sum of $335,831.63 and costs of $19,968.06.

IT IS SO ORDERED.

DATED: FEB 27, 2006

DICKRAN TEVRIZIAN

Dickran Tevrizian, Judge
United States District Court

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[10] This Court's determination to reduce Plaintiffs' attorneys' fees is necessary even in light of the excellent results that Plaintiffs' counsel has obtained for the class. The Agreements provide far-reaching and substantial benefits to the class. Through the changes mandated by the Resolution Agreement, hundreds of present and future class members will secure equal access to the important athletic programs offered at AHS. The Moor Field complex is a flagship athletic facility serving the entire Alhambra community. The building of two state-of-the-art softball fields at Moor Field will send a vital message to the community regarding the equal importance of girls' athletics. Once built, the softball fields will serve girls at AHS and throughout the community for generations to come. Moreover, School District Defendants' counsel have stated that they will or have already implemented many of the policy changes mandated by the Resolution Agreement district-wide. In other words, as a result of this litigation, girls attending other high schools will benefit from greater access to interscholastic athletics. Thus, the results obtained are remarkable. Notwithstanding, a 50 percent reduction in attorneys' fees is warranted for the reasons discussed in this Order.



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