

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR GUERRERO,

No. C 13-05671 WHA

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION;
STATE PERSONNEL BOARD,

Defendants.

**ORDER RESOLVING
OBJECTIONS, ADOPTING
SPECIAL MASTER'S
REPORT AND
RECOMMENDATION WITH
ONE MODIFICATION, AND
FIXING COMPENSATION**

INTRODUCTION

In this Title VII challenge, plaintiff moved for attorney's fees and expenses. A prior order held that plaintiff was entitled to a reasonable amount of attorney's fees and costs based on his victory (Dkt. No. 313). The special master then issued a report and recommendation regarding the amount of the award. This order resolves the pending objections and adopts the special master's report and recommendation with one modification.

STATEMENT

The history of this action has been summarized in prior orders and will not be repeated herein (Dkt. No. 277). In short, after a six-day bench trial, an order found that defendants had violated Title VII by discriminating against plaintiff, a Latino job applicant, based on his previous use of an invalid social security number. Plaintiff filed his motion for attorney's fees and expenses on October 30, 2015 (Dkt. 296). An order appointed Attorney Christina Chen as the special master under Rules 53 and 54.

1 The special master reviewed the parties' submissions and allowed supplemental
2 submissions. The special master then filed a 73-page report regarding attorney's fees and
3 expenses (Dkt. No. 352).

4 In short, plaintiff sought \$1,621,776.15 in attorney's fees (including fees on fees),
5 \$22,469.61 in statutory costs, and \$145,972.86 in non-statutory litigation expenses. Defendants
6 contended the attorney's fees should be reduced to \$279,265. The special master recommended
7 an award of \$1,186,307.70 in attorney's fees, \$20,569.01 in statutory costs, \$145,972.86 in
8 non-statutory litigation expenses, and \$50,717.12 of fees-on-fees. This recommendation
9 reflected a 15 percent reduction to the lodestar, which the report concluded was appropriate
10 given that plaintiff had achieved "good — but not excellent — overall results when viewed in
11 relation to the 3,000+ hours claimed" (*id.* at 1-2, 62).

12 The special master submitted an invoice for her fees and recommended a 50-50
13 allocation of her fees between defendants and plaintiff. The report also recommended staying
14 any award of reasonable attorney's fees, costs, and expenses until after all appeals had been
15 exhausted.

16 On May 12, 2016, the California Department of Corrections and Rehabilitation (CDCR)
17 moved to modify the special master's recommendation. The California State
18 Personnel Board (SPB) and plaintiff lodged objections.

19 ANALYSIS

20 1. DEFENDANTS' OBJECTIONS.

21 Defendants object to the recommended 15 percent reduction of the lodestar, arguing a
22 further reduction is warranted. Defendants assert that a 35 percent reduction is warranted due to
23 plaintiff's limited success.

24 *First*, defendants argue that a further reduction is warranted because plaintiff could have
25 obtained the same individual relief in state court. In response, plaintiff argues that defendants
26 failed to properly raise this argument in their original oppositions to plaintiff's motion for
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1 attorney's fees, thereby forfeiting this argument. This order agrees.¹ Furthermore, CDCR
2 proffers no authority for the conclusion that a fee reduction is appropriate because plaintiff
3 could have obtained the same relief in state court. Moreover, the assertion is speculative;
4 ascertaining whether plaintiff could have obtained the same relief in state court is beyond the
5 purview of this motion. This objection is therefore **OVERRULED**.

6 *Second*, defendants argue a further reduction is warranted because the success achieved
7 by plaintiff was limited in comparison to the scope of the litigation as a whole. The report
8 acknowledged that reaching a fair and appropriate percentage for the lodestar reduction here
9 was "tricky" (Dkt. 352 at 65). The report concluded that a 15 percent reduction was warranted
10 because plaintiff obtained "make-whole equitable relief" but not "broad systemic reforms." The
11 report noted the absence of on-point case law for our situation. Nonetheless, the recommended
12 reduction is appropriate given other holdings in our Circuit (*id.* at 61-64). This order finds the
13 special master's recommendation reasonable. Defendants' objection is **OVERRULED**.

14 *Third*, SPB objects to the special master's conclusion that the unsuccessful due process
15 claims were related to the successful Title VII claims. SPB's arguments, however, are
16 unpersuasive. Prior orders on the Title VII claim made specific findings related to the process
17 SPB provided to plaintiff. For example, an order concluded that SPB had failed to individually
18 assess plaintiff's application or properly weigh all relevant factors (Dkt. 263). The Title VII
19 claim covered the same factual territory as the due process claim; the two claims were therefore
20 related. SPB's objection is **OVERRULED**.

21 SPB also objects to the fact that the report did not recommend the same apportionment
22 for expenses and costs as it did for attorney's fees. As to attorney's fees, the report
23 recommended an apportionment of 80 percent liability for CDCR and 20 percent liability for
24 SPB. This order concludes that the same apportionment of expenses and costs is appropriate.

25
26
27 ¹As part of its analysis as to the relatedness of plaintiff's successful and unsuccessful claims, CDCR
28 asserted, in passing, that the same equitable relief would have been available to plaintiff through his petition for
writ of mandate (Dkt. No. 310, p. 5). But CDCR did not raise this as a separate and distinct basis for a fee
reduction. Defendants therefore did not properly raise this argument in proceedings before the special master.

1 This order holds that CDCR shall be 80 percent liable for expenses and costs and SPB shall be
2 20 percent liable.

3 **2. PLAINTIFF'S OBJECTIONS.**

4 Plaintiff did not lodge formal objections as to the recommendation regarding attorney's
5 fees. Rather, plaintiff stated that the report of the special master reflects an "eminently fair" and
6 reasonable overall resolution of the fees owed plaintiff. As discussed below, however, plaintiff
7 objects to the 50-50 apportionment of special master fees.

8 **3. SPECIAL MASTER'S FEES AND EXPENSES.**

9 The special master billed 190 hours total and requested compensation for 110 hours,
10 equaling \$22,000 at \$200 per hour. Neither side objected to the entries on her invoice. This
11 order finds that the special master's fees and expenses are reasonable. Pursuant to Rule 53(g),
12 the special master's compensation is hereby **FIXED**.

13 The special master proposed the following allocation for special master expenses: (1)
14 50 percent for plaintiff, (2) 25 percent for CDCR and (3) 25 percent for SPB (Dkt. No. 353).

15 Plaintiff objects to the recommended apportionment of special master fees. The
16 recommendation is reasonable, however. The special master did not agree with plaintiff on
17 every issue; plaintiff's positions played at least a partial role in the need for a special master's
18 intervention. Plaintiff's objection is therefore **OVERRULED**.

19 Plaintiff alternatively asks that the cost award be amended to include plaintiff's portion
20 of the special master's fees. A prior order specifically addressed this issue by stating that, if
21 fees of the special master are allocated to plaintiff, the fees "shall be deducted from the
22 attorney's fee award" (Dkt. No. 313 at 14). Plaintiff's request to allocate his portion of the
23 special master fees as costs is therefore **DENIED**.

24 **4. PLAINTIFF'S FURTHER REQUEST FOR FEES.**

25 Plaintiff makes a request for fees-on-fees-on-fees for the work of preparing a response to
26 defendants' objections to the report of the special master (Dkt. No. 357). This order concludes
27 that plaintiff played at least a partial role in the need for a special master and thus the post-
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report briefing. This order declines to launch a further satellite to orbit this satellite litigation. Plaintiff's request for fees-on-fees-on-fees is **DENIED**.

5. STAY OF PAYMENT OF AWARD PENDING APPEAL.

The report recommends staying any award of attorney's fees, costs, and expenses until after all appeals have been exhausted. Plaintiff does not object to this recommendation but asks the Court to clarify that only the payment of the award is stayed pending appeal but that the time within which defendants must appeal from the Court's order and/or amended judgment awarding fees and expenses begins to run from the date of its issuance. This issue is addressed below.

CONCLUSION

For the reasons stated herein, all objections are hereby **OVERRULED**. The special master's report and recommendation is hereby **ADOPTED WITH ONE MODIFICATION**. As to expenses and costs, this order holds that CDCR shall be 80 percent liable and SPB shall be 20 percent liable.

Accordingly, plaintiff is hereby awarded \$1,186,307.70 in attorney's fees, \$20,569.01 in statutory costs, \$145,972.86 non-statutory litigation expenses, and \$50,717.12 of fees-on-fees. The special master's compensation of \$22,000 is hereby **FIXED**.

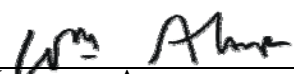
Payment of this award is **STAYED** until all appeals are exhausted. This stay is limited to payment and does not affect any rights to appeal this order.

The parties shall promptly send payment to the special master as follows: (1) plaintiff shall send a check for 50 percent of the compensation (\$11,000); (2) CDCR shall send a check for 25 percent of the compensation (\$5,500); and (3) SPB shall send a check for 25 percent of the compensation (\$5,500).

The Court extends its highest compliments and thanks to Attorney Christina Chen for her excellent service and for taking a reduced fee to be of service to the district court.

IT IS SO ORDERED.

Dated: June 16, 2016.


 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE

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

VICTOR GUERRERO,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION;
STATE PERSONNEL BOARD; et al.,

Defendants.

Case No. 3:13-cv-05671-WHA

**SPECIAL MASTER REPORT
AND RECOMMENDATION
RE PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES AND
EXPENSES**

[Hon. William Alsup]

INTRODUCTION

The undersigned special master submits this report and recommendation on the amount of reasonable attorney's fees and expenses the Court should award to Plaintiff Victor Guerrero. Plaintiff seeks: (1) **\$1,621,776.15** in attorney's fees (including fees on fees), (2) **\$22,469.61** in statutory costs and (3) **\$145,972.86** in non-statutory litigation expenses. Defendant California Department of Corrections and Rehabilitation ("CDCR") contends the fee award should be reduced to **\$279,265**. Defendant California State Personnel Board ("SPB") joins CDCR's position, adds some objections, but does not propose any alternative fee amount. This report finds and recommends: (1) reasonable

attorney's fees of **\$1,186,307.70** (for the merits litigation), (2) statutory costs of **\$20,569.01**,
 (3) non-statutory litigation expenses of **\$145,972.86** and (4) fees on fees of **\$50,717.12**.
 This report also recommends apportioning the total fee award of **\$1,237,024.82** so that
 CDCR is liable for **eighty percent (80%)** and SPB is liable for **twenty percent (20%)**.
 This results in **\$989,619.86** for CDCR and **\$247,404.96** for SPB.

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SCOPE OF REFERRAL

This matter came before the special master by the Court's Order Appointing

1 Attorney Christina Chen as Special Master and Setting Schedule for Report and
2 Recommendation, dated February 22, 2016. (Dkt. 328.) Among other things, the order
3 authorized the special master to make proposed findings and determine the amount of
4 attorney's fees and expenses to be awarded Plaintiff based on his victory for Title VII
5 violations due to disparate impact. The order provided the special master with all powers set
6 forth in Rules 53(c) and 54(d)(2)(D). This report is made in compliance with that order.

7 **BACKGROUND**

8 **Summary on Nature of Case**

9 As summarized in the Order re Relief (Dkt. 277), Plaintiff Victor Guerrero became a
10 United States citizen in 2011 and applied to become a prison guard with CDCR. Before Mr.
11 Guerrero became a legal permanent resident, however, he had used an invented social
12 security number for employment purposes. After passing CDCR's written and physical
13 examinations, CDCR placed him on its eligibility list. The next step included completing
14 CDCR's background investigation questionnaire. Question 75 asked: "Have you ever had or
15 used a social security number other than the one you used on this questionnaire?" Mr.
16 Guerrero answered "Yes" and wrote in an explanation. CDCR treated Mr. Guerrero's prior
17 invalid SSN use as a showstopper and withheld him from the eligibility list for this sole
18 reason. Mr. Guerrero appealed CDCR's withhold decision to SPB, which affirmed. A year
19 later, Mr. Guerrero again applied to CDCR and was withheld for the same reason. Mr.
20 Guerrero then appealed CDCR's second withhold to SPB, which remained pending during
21 most of this action. In Mr. Guerrero's case, Defendants violated Title VII by failing to
22 properly consider the recency, relevancy, and severity of Mr. Guerrero's prior invalid SSN
23 use, factors required by the Equal Employment Opportunity Commission's guidelines.
24 Instead, CDCR and SPB conclusively dismissed Mr. Guerrero's employment application
25 without considering those factors. Consequently, after a six-day bench trial, the Court found
26 that Defendants violated Title VII. (Dkt. 263, Findings of Fact and Conclusions of Law 22

“FFCL.”) Plaintiff, however, lost on his federal constitutional claims. His state-law claims, dismissed from this action, are pending in state court. The procedural history of this action is summarized in the FFCL.

Plaintiff’s Counsel Legal Aid Society-Employment Law Center

Throughout this litigation, Plaintiff was and is represented by Legal Aid Society-Employment Law Center (“LAS”) in San Francisco, CA. Founded in 1916, LAS is a private, non-profit public interest law firm with the mission to protect and expand the workplace rights of historically disadvantaged communities. Over the years, LAS has represented persons of color, women, recent immigrants, individuals with disabilities, sexual minorities, and the working poor in challenges to discriminatory or otherwise unlawful employment practices that have resulted in serious injustices to those communities. (Dkt. 296-2, Declaration of Christopher Ho ¶4 “Ho Decl.”) On this fee application, Plaintiff is co-represented by the Law Offices of Richard M. Pearl in Berkeley, CA. Because LAS provides legal services to its clients—such as Mr. Guerrero—free of charge, it relies upon court awards of statutory fees and costs when its cases are successful. (Dkt. 299, Declaration of Jack Lee ¶15 “Lee Decl”; Dkt. 316-2, Supplemental Declaration of Christopher Ho ¶ 17 “Ho Suppl. Decl.”) Any fees and expenses awarded to LAS in this action will not inure to the personal benefit of any individual associated with it. Instead, any awarded funds will be used to support further public interest litigation by LAS on behalf of underrepresented workers such as Mr. Guerrero. (Ho Decl. ¶ 73.)

Summary of Fee Motion Proceedings

Plaintiff filed his motion for attorney’s fees and expenses on October 30, 2015. (Dkt. 296.) Concurrently, Plaintiff filed his Bill of Costs. (Dkt. 295.) CDCR filed its first opposition to the motion on November 20, 2015. (Dkt. 310.) While joining in CDCR’s opposition, SPB also filed its own opposition. (Dkt. 312.) On November 23, 2015, the Court issued its Order re Attorney’s Fees and Costs. That order set forth very detailed

1 procedures on how the fee motion would progress toward resolution. Among other things,
2 that order: (1) required Plaintiff's supplemental submission of re-organized billing records,
3 (2) provided for Defendants' inspection of underlying time records, (3) established how
4 Defendants may oppose Plaintiff's supplemental submission in a meaningful way, (4)
5 required the parties to hold an in-person settlement conference after the second round of
6 submissions to try to resolve all differences on award amount, (5) announced the Court's
7 intention to appoint a special master and (6) alerted the parties that, absent any
8 supplementation allowed by the special master, the second round of submissions (together
9 with the briefs already filed) shall be the entire record on the fee motion. (Dkt. 313, Order
10 re Attorney's Fees and Costs ¶¶ 3-4, 8-11, 13 "November 23 Order.")

11 Plaintiff filed its supplemental submission with re-organized billing records on
12 December 11, 2015. (Dkt. 315, 315-1.) CDCR filed its second opposition on December 28,
13 2015. (Dkt. 318.) While joining in CDCR's second opposition, SPB also filed its own
14 second opposition. (Dkt. 320.) On January 7, 2016, counsel for the parties and a CDCR
15 representative met in person to try to resolve all differences on the amount of the award. No
16 resolution was reached. (Dkt. 321.) The Court appointed the undersigned after the parties
17 were unable to suggest any agreed-to candidates. Before the undersigned was appointed,
18 the parties and the undersigned convened a teleconference to discuss any potential conflicts
19 and raise any questions. No objections were made to the undersigned's appointment. (Dkt.
20 328.) The Court appointed the undersigned on February 22, 2016. (Dkt. 328.)

21 **Proceedings Before the Special Master**

22 Pursuant to the appointment order, on February 26, 2016, the parties jointly
23 submitted to the special master all briefing and relevant documents filed in this action
24 regarding Plaintiff's fee application. Plaintiff's counsel also submitted electronic copies of
25 certain tables and its project-by-project billing records with line item time/task entries (all
26 filed with the fee application). On March 10, 2016, the special master issued an order to the

parties, requesting copies of all authorities cited in the motion papers for attorney's fees and expenses. (Dkt. 330.) On March 30, 2016, the special master issued a second order to Plaintiff. It requested: (1) one master chart summarizing all time claimed and not claimed for each of LAS's eight timekeepers; (2) mini-summary charts of total time and fees sought per individual timekeeper broken down on a project-by-project basis corresponding to the listing of projects in the fee motion; and (3) copies of court orders and opinions for court awarded attorney's fees and expenses from 2011 to 2016 in individual employment and civil rights actions litigated by San Francisco Bay Area attorneys, including any court awarded attorney's fees and expenses LAS has won from 2011 to 2016. (Dkt. 346.)

Given the parties' voluminous submission on this fee motion, and each party's opportunity to provide two rounds of written arguments and supporting evidence, this report finds Plaintiff's motion is appropriate for determination without oral arguments.

LEGAL STANDARD

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).¹ There is "a strong presumption that the lodestar represents the reasonable fee." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). "The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward, including the

¹ In *Hensley*, the disputed fee award was under 42 U.S.C. § 1988. 461 U.S. at 433. Nonetheless, *Hensley* applies here. The *Hensley* Supreme Court noted that Section 1988 was patterned upon the attorney's fees provision in Title VII, and thus "[t]he standards set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party.'" *Id.* at 433 n.7.

important factor of the ‘results obtained.’ This factor is particularly crucial where a plaintiff is deemed ‘prevailing’ even though he succeeded on only some of his claims for relief.” *Hensley*, 461 U.S. at 434.

DISCUSSION

I ENTITLEMENT TO FEES AND EXPENSES

Plaintiff won his Title VII claim at trial and judgment was entered in his favor on that claim. (Dkt. No. 278.) As conceded in CDCR’s and SPB’s first oppositions to Plaintiff’s motion for fees and expenses, Plaintiff is entitled to recover a reasonable amount of attorney’s fees and expenses under Title VII, 42 U.S.C. § 2000e-5(k), based on his victory. (Dkt. 313.) That statutory section provides: “In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee (including expert fees) as part of the costs”

II REASONABLE RATES

Plaintiff seeks fees for nine timekeepers: six attorneys with requested hourly rates ranging from \$775 to \$385 and three paraprofessionals with a requested hourly rate of \$165.

Reasonable rates are calculated according to the prevailing market rates in the relevant community, with close attention paid to the fees charged by “lawyers of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *Davis v. City and Co. of San Francisco*, 976 F.2d 1536, 1545-1546 (9th Cir. 1992).

The “relevant community” is the District in which the lawsuit proceeds. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992). The fair market value of the work performed sets the measure, as determined by the prevailing rates charged by commercial law firms for reasonably similar federal litigation. *Davis*, 976 F.2d at 1547, *affirming U.S. v. City & Co. of San Francisco*, 748 F.Supp. 1416, 1431 (N.D. Cal. 1990) (plaintiff’s non-profit attorneys entitled to rates charged by “corporate attorneys of equal caliber”); *see also Blum*, 465 U.S. at 895 (stating reasonable rate is prevailing market rates, “regardless of

1 whether plaintiff is represented by private or nonprofit counsel”).

2 The fee applicant has the burden of producing satisfactory evidence, in addition to
3 the affidavits of its attorneys, that the requested rates are in line with those prevailing in the
4 community for similar services of attorneys of reasonably comparable skill, experience, and
5 reputation. *Hensley*, 461 U.S. at 433. Affidavits of the fee applicant’s attorney and other
6 attorneys regarding prevailing fees in the community, and rate determinations in other cases,
7 particularly those setting a rate for the attorneys, are satisfactory evidence of the prevailing
8 market rate. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.
9 1990). When considering the rates of other attorneys of comparable skill, experience, and
10 reputation, courts should look to fees awarded in other types of similar litigation. *Bernardi*
11 *v. Yeutter*, 951 F.2d 971, 974 (9th Cir. 1991). Parties are required to justify the
12 reasonableness of the requested rates; if the party fails to meet this standard, the fee request
13 may be reduced or excluded altogether. *See, e.g., Blackwell v. Foley*, 724 F.Supp.2d 1068
14 (N.D. Cal. 2010).

15 **A. Plaintiff’s Evidence and Defendants’ Contentions**

16 To support Plaintiff’s requested hourly rates from \$775 to \$385 for attorneys and
17 \$165 each for one paralegal and two legal assistants, his counsel submits a plethora of
18 evidence: (1) declarations of four attorneys with ties to LAS who also practice in the
19 Northern District of California; (2) resumes of all six attorney timekeepers; (3) compilations
20 of surveys by commercial law firms with offices in this District showing hourly billing rates
21 for private attorneys of various seniority; (4) summaries of court-awarded attorney’s fees in
22 complex civil actions; and (5) actual copies of court awards of attorney’s fees in class
23 settlements.

24 Attorneys submitting declarations are Christopher Ho of LAS (Plaintiff’s lead
25 counsel), Richard Pearl (Plaintiff’s co-counsel on this fee application), James Finberg of
26 Altshuler Berzon LLP and Jack Lee of Minami Tamaki LLP (both practice in this District

1 and are on the Board of Directors for LAS). Among other things, Mr. Ho's two declarations
 2 set forth his training, qualifications and experience as well as the same for the four other
 3 LAS attorneys. All are detailed in Section II.B. below. Mr. Ho's declaration also describes
 4 how LAS sets its hourly rates:

5 The hourly attorney and legal worker rates described and sought below are
 6 derived from a survey conducted annually by the LAS staff and Board of
 7 Directors, which takes into account the billing rates charged by for-profit
 8 San Francisco law firms for attorneys of comparable experience doing
 9 comparable work, as well as rates utilized by comparable non-profit public
 10 interest organizations for the same purpose. Many of LAS's Board
 members are private attorneys in the San Francisco area, and together they
 have a full knowledge of prevailing market rates. Our rates are also based
 upon other information received from private attorneys relating to the rates
 charged by San Francisco law firms for comparable litigation. (Ho Decl. ¶
 55.)

11 Richard Pearl has practiced law in California since 1971, specializing on cases and
 12 appeals involving court-awarded attorney's fees for about thirty-three years. (Dkt. 297,
 13 Declaration of Richard M. Pearl ¶¶ 3-4 "Pearl Decl.") Mr. Pearl has been retained by LAS
 14 as co-counsel on this fee application, taking the lead in this regard. (Pearl Decl. ¶ 1.) His
 15 background and experience are detailed below in Section II.B.5. Suffice it to say, Mr. Pearl
 16 has extensive experience on issues involving court-awarded attorney's fees from many
 17 angles—as an advocate, expert witness, mediator, arbitrator, author and lecturer. (Pearl
 18 Decl. ¶¶ 2, 4-5, 7.) His expert testimony on the reasonableness of attorney's rates and fees
 19 has been favorably cited in numerous federal and state courts in various actions. (Pearl
 20 Decl. ¶ 7.) Here, Mr. Pearl opines that "the rates charged by Plaintiff's attorneys for their
 21 work in these proceedings are well within, and sometimes significantly below, the range of
 22 rates charged by comparably qualified attorneys for reasonably similar work." (Pearl Decl.
 23 ¶ 15.) Under penalty of perjury, Mr. Pearl proffers the data underlying his opinion. They
 24 are summaries of local rates from seventeen recent court awards of attorney's fees, rate
 25 information from credible surveys of legal rates and a compilation of standard hourly non-
 26 contingent rates for law firms with California offices as stated in court filings, depositions,

1 surveys and other reliable sources. (Pearl Decl. ¶¶ 12-14; Dkt. 297-1, Exh. C-E pgs. 11-
2 46².)

3 James Finberg has practiced law for approximately thirty years, within California
4 since 1992. (Dkt. 298, Declaration of James M. Finberg ¶¶ 6-7 “Finberg Decl.”) He is a
5 partner at Altshuler Berzon LLP specializing in labor, employment and civil rights law, and
6 was formerly a partner at Lieff Cabraser Heimann & Bernstein LLP. (Finberg Decl. ¶¶ 1, 4,
7 6.) He has served as lead or co-lead counsel in numerous class actions involving race,
8 gender, national origin and age discrimination as well as violations of wage/hour laws.
9 (Finberg Decl. ¶¶ 7-8.) Since 2005, Mr. Finberg has been listed by *Best Lawyers in*
10 *America* as one of the best lawyers for labor and employment law. In 2009, Mr. Finberg
11 was named a California Lawyer of the Year by the *California Lawyer* magazine for civil
12 rights law. (Finberg ¶ 10.) Mr. Finberg’s current hourly rate is \$895. Given his personal
13 knowledge of hourly rates charged by other attorneys, Mr. Finberg believes his rate is fully
14 consistent with the market rate for attorneys with comparable expertise, experience and
15 qualifications. (Finberg Decl. ¶¶ 15-16.) Furthermore, Mr. Finberg “believe[s] the rates
16 requested by the Legal Aid Society-Employment Law Center are reasonable given the skill,
17 expertise, and experience of the lawyers working on the case, and are well within the range
18 of rates awarded to attorneys in Bay Area with that experience and background for similar
19 work.” (Finberg Decl. ¶ 22.)

20 Jack Lee has practiced law in California for over thirty-nine years. (Dkt. 299,
21 Declaration of Jack W. Lee ¶ 6 “Lee Decl.”) He is a partner with Minami Tamaki LLP, and
22 was formerly associated with a law firm which prosecuted complex employment actions
23 throughout the nation. Mr. Lee was also a Regional Attorney for the Office of Civil Rights,
24 U.S. Department of Education, responsible for enforcing anti-discrimination laws in

25
26 ² All references to page numbers in court filings use the page numbers assigned by the ECF
system, regardless of the page numbers used in the original document.

1 federally funded schools. (Lee Decl. ¶¶ 1, 6.) Serving as lead counsel or counsel, Mr. Lee
 2 has substantial experience litigating individual and class action employment cases in federal
 3 and state courts. (Lee Decl. ¶¶ 6, 8, 10.) Because Mr. Lee’s practice is primarily sustained
 4 by statutory fees-shifting cases, a significant part of his work is also dedicated to the law
 5 governing attorneys’ fees recovery on behalf of prevailing plaintiffs. In addition to his own
 6 fees petitions, Mr. Lee has submitted declarations as an expert on the reasonableness of
 7 attorneys’ fees and hourly rates in other Title VII cases. (Lee Decl. ¶ 11.) Mr. Lee’s current
 8 hourly rate is \$795, which he believes is reasonable given his experience and background.
 9 (Lee Decl. ¶ 17.) Based on his knowledge of hourly rates charged by other local
 10 employment attorneys, and of recent fee awards to local attorneys in employment and civil
 11 rights cases, Mr. Lee opines that the hourly rates requested here by LAS are (1) reasonable
 12 for attorneys with comparable expertise, experience and qualifications and (2) at or below
 13 market for similar kinds of work. (Lee Decl. ¶¶ 16, 20, 22.) Furthermore, for each of the
 14 six attorneys here, Mr. Lee goes on to specifically opine that each of the six requested
 15 hourly rates is reasonable and either at or below market, after reviewing each of the six
 16 attorney’s qualifications and experience. (Lee Decl. ¶¶ 25-29, 31.)

17 In response, Defendants oppose Plaintiff’s requested hourly rates from \$775 to \$385
 18 for attorneys and \$165 for legal professionals as excessive and unreasonable. (Dkt. 310,
 19 CDCR Defendants’ Opposition 6-7 “CDCR Opp.”; Dkt. 312, State Personnel Board’s
 20 Opposition 4 n.1 “SPB Opp.”) With SPB joining CDCR’s contentions, Defendants urge the
 21 Court to grant flat hourly rates of no more than \$200 for all six attorneys and \$150 for all
 22 three paralegals, resulting in an initial lodestar of \$630,715. (CDCR Opp. 7.) As support,
 23 Defendants advance an Administrative Bulletin setting the billing rates for CDCR’s counsel
 24 here—the California Department of Justice (“DOJ”). The Bulletin states the DOJ’s billing
 25 rates to its clients through June 2017 is \$170 per hour for Attorney Services and \$120 per
 26 hour for Paralegal Services, regardless of experience level of the DOJ attorney or paralegal.

(Dkt. 311, Declaration of Christopher M. Young ¶ 2 “Young Decl.”; Dkt. 311-1, Exh. A pg. 2; Dkt. 319, Declaration of Christopher M. Young ¶ 12 “Young Suppl. Decl.”)

Defendants’ call for a flat \$200 hourly rate for all six of Plaintiff’s attorneys is unreasonable. While this report acknowledges that the Court’s Order re Fees and Expenses mandated disclosure of billing rates charged to Defendants, neither CDCR nor SPB proffer any evidence that the DOJ’s much lower \$200 rate for attorneys is in keeping with the prevailing market rate within the Northern District of California for the areas of law litigated in this action. The DOJ billing rate appears to be the at-cost, in-house rate that the DOJ charges its clients within the State of California’s executive branch, regardless of the DOJ attorney’s experience, area of expertise, skill or office location. And while Defendants argue that the requested rate for Mr. Ho is over four times the rate for CDCR’s counsel, they offer no evidence to substantiate that CDCR’s counsel and Mr. Ho have similar skill levels.

Attempting to sidestep this evidentiary gap, Defendants cite *Northwest Energetic Services, LLC v. California Franchise Tax Bd.*, 159 Cal.App.4th 841, 881 (Cal. App. 1st Dist. 2008), for the proposition that the “exorbitant hourly rates requested by plaintiff’s counsel” should not be granted against a state governmental agency with limited resources. (CDCR Opp. 6.) Reliance on *Northwest* is misplaced. *Northwest* did not address, much less decide, any issue on what constitutes a reasonable hourly rate for the lodestar calculation. Rather, *Northwest* concerned a state trial court’s potentially inappropriate adjustment of the lodestar amount upward, despite the mitigating factor of whether the attorney’s fees award “would be against the state and ultimately fall upon the taxpayers.” *Id.* at 879, 881. Moreover, *Northwest* underscores that a state trial court in determining an attorney’s fees award must not do what Defendants have done here—which is “intertwine considerations relevant to the determination of the lodestar amount with factors relevant to whether the lodestar should be adjusted upward.” *Id.* at 879. It bears mentioning that Defendants neither advance *Northwest* nor their status as state government agencies when asking the

1 Court to reduce Plaintiff's lodestar amount.

2 Switching gears, Defendants' final argument is that, even if Plaintiff's attorneys are
3 entitled to hourly rates over \$200, the requested rates ranging from \$775 to \$385 are
4 unreasonably too high. (CDCR Opp. 7.) Their two rationales are (1) Mr. Finberg's
5 declaration basing his law firm's commercial hourly rates on court awards of attorney's fees
6 in class settlements and (2) the hourly rates that Judge Claudia Wilken awarded to ERISA
7 attorneys in *Zoom Elec., Inc. v. IBEW, Local 595*, 2013 U.S. Dist. LEXIS 73983 (N.D. Cal.
8 May 24, 2013).

9 Neither is persuasive. First, Plaintiff's attorneys are not limited to only the rates
10 charged or awarded in employment and civil rights cases. Instead, they are entitled to the
11 rates charged by attorneys handling similarly complex federal cases in other fields as well,
12 including, when appropriate, class actions. *Prison Legal News v Schwarzenegger*, 608 F.3d
13 446, 455 (9th Cir. 2010) ("Although the state officials urge us to look only to the rates
14 charged by other attorneys involved in prison litigation, the proper scope of comparison is
15 not so limited, but rather extends to all attorneys in the relevant community engaged in
16 'equally complex Federal litigation,' no matter the subject matter."); *Camacho v Bridgeport*
17 *Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (consumer attorneys not limited to rates
18 charged by or awarded to other consumer attorneys).

19 Second, *Zoom* is unhelpful to Defendants. There, Judge Wilken granted a motion for
20 attorney's fees under California state law, allowing reasonable hourly rates of \$675 for
21 partners, \$300 to \$400 for associates, and \$180 to \$225 for law clerks and paralegals at the
22 fee applicants' law firm of Leonard Carder LLP. 2013 U.S. Dist. LEXIS 73983 at *4, 10-
23 11, 13. *Zoom*, however, did not reveal the qualifications or experience levels of the two
24 attorneys of record (Christina S. Hwang and Sara B. Tosdal) representing the fee applicants,
25 nor any of the other timekeepers who billed the fee applicants. Instead, *Zoom* very briefly
26 mentioned the experience level of the attorney submitting the fee declaration, but it is

unclear whether he represents the fee applicants. Thus, the rates found reasonable in *Zoom* cannot be reliably benchmarked to the qualifications, skills and experience of Plaintiff's attorneys or their corresponding requested hourly rates.

Given the above and each attorney's training, qualifications and experience as detailed in Section II.B below, this report finds that Plaintiff's requested hourly rates for his six attorneys are reasonable, with the caveat of three adjustments explained in Section II.B.

To summarize:

Attorney	Reasonable Hourly Rate
Alexis Alvarez	\$325
Marsha Chien	\$358
Christopher Ho	\$753.50
William McNeill	\$754
Richard Pearl	\$775
Diane Webb	\$654.50

Defendants do not dispute any of the six attorney's hourly rates as too high based on any absent or subpar qualifications, skills, expertise or experience. Nor do Defendants argue that Plaintiff's counsel was ill prepared, disorganized, discourteous, provided shoddy work product or performed poorly during the pre-trial, trial or post-trial briefing, proceedings and court appearances. Defendants do not attack Plaintiff's ample evidentiary submission on requested hourly rates as inadequate, inaccurate or not credible. Defendants also do not dispute that in gauging the prevailing market rates for non-profit, public interest attorneys the appropriate benchmark is private practice attorneys at for-profit commercial law firms within the same District.

B. Reasonable Rates for Attorneys

1. Alexis Alvarez

For Ms. Alvarez, Plaintiff seeks an hourly rate of \$385. Ms. Alvarez, a 2011

graduate of the King Hall School of Law at the University of California Davis, is a staff attorney at LAS- ELC. Prior to LAS, Ms. Alvarez was a staff attorney at the Disability Rights Legal Center and a judicial law clerk for the Los Angeles County Superior Court as well as the Colorado Court of Appeals. (Ho Decl. ¶ 60.) She received undergraduate degrees from Colorado State University. (Dkt. 303, Exh. F pg. 2.) In this action, Ms. Alvarez assisted in preparing Plaintiff's motions in limine. (Ho Suppl. Decl. ¶ 30.)

This report finds and recommends that the reasonable hourly rate for Ms. Alvarez is **\$325**. This lower rate is keyed to Ms. Chien's reasonable rate of \$358 (explained below) and takes into account that Ms. Alvarez has less experience than Ms. Chien. The \$60 reduction in Ms. Alvarez's rate also maintains the same \$33 difference between Plaintiff's requested rates of \$418 for Ms. Chien and \$385 for Ms. Alvarez.

2. Marsha Chien

For Ms. Chien, Plaintiff seeks an hourly rate of \$418. After graduating from the University of Pennsylvania Law School in 2010, where she served on law review, Ms. Chien served for two years as a judicial law clerk for U.S. District Judge Marsha J. Pechman of the Western District of Washington. (Ho Decl. ¶ 58.) While a law student, Ms. Chien assisted with the representation of immigrants and non-citizens in civil rights cases. (Ho Decl. ¶ 58.) She received her undergraduate degree from Georgetown University. (Dkt. 302, Exh. E pg. 3.) After joining LAS as a Skadden Foundation Fellow in 2012, Ms. Chien became a LAS staff attorney in 2014. At LAS- ELC, Ms. Chien's practice focused on enforcing the workplace rights of immigrants and persons of color. She is now an Assistant Attorney General in the Civil Rights Unit of the Office of the Attorney General, State of Washington. (Ho Decl. ¶¶ 58-59.)

In this action, Ms. Chien carried a substantial share of responsibility for moving this case forward. She argued almost every motion heard by the Court, acted as co-lead counsel at trial, and was primarily responsible for managing Plaintiff's communications with

opposing counsel. She played an integral role in the development of Plaintiff's legal theories, and was also closely involved with many of the major decisions made in this case. (Ho Suppl. Decl. ¶ 28.)

This reports finds and recommends that the reasonable hourly rate for Ms. Chien is **\$358**. This lower rate is reasonable because \$358 is in fact the most common implicit hourly rate used for Ms. Chien within LAS's fee calculations across various exhibits and charts throughout its evidence supporting the fee application, including the key exhibits on billing records documenting time spent and fees incurred. For example, see Dkt. 296-1, Exh. B pg. 4; Dkt. 300, Exh. C pgs. 4, 6-7, 18, 26, 47; Dkt. 315 pg. 14; Dkt. 315-1 pgs. 2, 23, 35, 54, 77, 93, 116; Dkt. 315-15 pg. 2; Master Summary Chart and Mini-Summaries Chart in response to the undersigned's Order re Summaries and Awards (attached hereto as Exhibits 1 and 2). Moreover, it is reasonable to hold LAS to Ms. Chien's \$358 hourly rate because the requested \$1,606,857.40 lodestar (excluding Mr. Pearl's fees) appears to be calculated with this rate. Defendants have relied upon LAS's fee calculations to oppose this fee application.

3. Christopher Ho

For Mr. Ho, Plaintiff seeks an hourly rate of \$753.50. Mr. Ho is a 1987 graduate of Stanford Law School, and was admitted to practice in California the same year. He holds an undergraduate degree from Yale and another graduate degree from Harvard. (Ho Suppl. Decl. ¶ 19; Dkt. 296-3, Exh. A pg. 2.) After graduating law school, Mr. Ho held two one-year public interest attorney fellowships. He has been employed at LAS as a staff attorney since 1990, and as a senior staff attorney since 1997. (Ho Suppl. Decl. ¶ 19.)

In the course of Mr. Ho's work at LAS, he has developed significant experience litigating cases that seek in particular to protect and strengthen the workplace protections available to members of national origin and racial minority communities. (Ho Suppl. Decl. at ¶ 20.) By listing the many employment discrimination cases from 1991 to recent times

1 where he served as lead or co-lead counsel, Mr. Ho demonstrates his extensive legal
 2 experience and, indeed, specialization in employee-side civil rights litigation during his
 3 entire legal career. (Ho Decl. ¶ 6-7.) In 2004, Mr. Ho received a *California Lawyer*
 4 Attorney of the Year Award for his work on two cases brought on behalf of immigrant
 5 workers. Martindale-Hubbell has assigned Mr. Ho an “AV” rating. He is currently a
 6 member of the Select Task Force on the Study of Harassment in the Workplace of the U.S.
 7 Equal Employment Opportunity Commission. (Ho Decl. at ¶ 8.)

8 In this action, Mr. Ho served as lead counsel. In that capacity and in collaboration
 9 with others, Mr. Ho developed the legal theories utilized in this action; handled and/or had
 10 final authority over all pleadings and other filings; assigned, coordinated, and supervised the
 11 work of the various attorneys and legal workers on this action; and had final responsibility
 12 for all major strategic decisions. (Ho Suppl. Decl. ¶ 23.)

13 This reports finds and recommends that **\$753.50** is a reasonable hourly rate for Mr.
 14 Ho.

15 **4. William McNeill**

16 For Mr. McNeill, Plaintiff seeks an hourly rate of \$770. Mr. McNeill, a 1971
 17 graduate of the University of Michigan Law School, is a senior staff attorney at LAS. (Ho
 18 Decl. ¶ 61.) He has an undergraduate degree from Oberlin College. At LAS, Mr. McNeill
 19 is also the Director of Race Equity Program. Prior to LAS, Mr. McNeill worked at other
 20 non-profit public interest law firms, in private practice and at the EEOC Litigation Center.
 21 (Dkt. 304, Exh. G pg. 2-3.) In this action, Mr. McNeill had an advisory role throughout this
 22 litigation on numerous matters of law and procedure. (Ho Suppl. Decl. ¶ 32.)

23 This reports finds and recommends that the reasonable hourly rate for Mr. McNeill is
 24 **\$754**. Like Ms. Chien’s lower rate, the \$754 rate for Mr. McNeill is reasonable because it is
 25 in fact the implicit hourly rate used for him within LAS’s fee calculations across exhibits
 26 and charts within Plaintiff’s evidence, including the key exhibits on billing records

documenting time spent and fees incurred. For example, see Dkt. 296-1, Exh. B pg. 4; Dkt. 300, Exh. C pgs. 221, 224, 232; Dkt. 315 pg. 15; Dkt. 315-1 pgs. 7, 10, 29, 39, 46, 52, 60, 76, 85, 90, 101, 108, 116; Dkt. 315-15 pg. 2; Exhibits 1 and 2 attached hereto.

5. Richard Pearl

For Mr. Pearl, Plaintiff seeks an hourly rate of \$775. Mr. Pearl, a 1969 graduate of Boalt Hall School of Law at the University of California Berkeley, is the principal of his own law firm, the Law Offices of Richard M. Pearl in Berkeley. (Pearl Decl. ¶¶ 2-3.) He has an undergraduate degree from the University of California Berkeley. (Dkt. 297-1, Exh. A pg. 2.) Since 1982, Mr. Pearl has specialized in cases and appeals involving court-awarded attorney's fees. He is the author of *California Attorney Fee Awards* (3d ed. Cal. CEB 2010) and its annual supplements, as well as its previous editions and annual supplements. California appellate courts have cited Mr. Pearl's treatise on more than thirty-five occasions. Mr. Pearl has lectured and written extensively on court-awarded attorney's fees. He has been a member of the California State Bar's Attorneys' Fees Task Force and has testified before the State Bar Board of Governors and the California Legislature on attorney's fee issues. In addition, Mr. Pearl has authored a federal manual on attorney's fees entitled *Attorneys' Fees: A Legal Services Practice Manual*, published by the Legal Services Corporation. (Pearl Decl. ¶ 4.) He has successfully handled five cases in the California Supreme Court involving court-awarded attorney's fees. (Pearl Decl. ¶ 5.) Mr. Pearl is frequently called upon as an expert to opine on the reasonableness of attorney's fees, and numerous federal and state courts have favorably cited his testimony on that issue. (Pearl Decl. ¶ 7.) Mr. Pearl's hourly rate is \$775, which is the rate he charges new market-rate paying clients in 2015. He has numerous clients paying that rate for his services. (Pearl Decl. ¶ 9.) In this action, LAS has retained Mr. Pearl as co-counsel on Plaintiff's fee application, and to take the lead in this regard. (Pearl Decl. ¶ 1.)

This report finds and recommends that **\$775** is a reasonable hourly rate for Mr. Pearl.

1 **6. Diane Webb**

2 For Ms. Webb, Plaintiff seeks an hourly rate of \$654.50. Ms. Webb, a 1998 graduate
3 of the University of San Francisco Law School, was a former partner at the San Francisco
4 offices of Morgan Lewis & Bockius LLP. (Ho Decl. ¶ 62.) She has an undergraduate
5 degree from San Francisco State University. (Dkt. 305, Exh. H pg. 2.) At LAS, Ms. Webb
6 is Chief Program Officer and General Counsel. In this action, Ms. Webb held an advisory
7 role in the latter stages of this litigation, particularly with respect to trial preparation and trial
8 strategy. (Ho Suppl. Decl. ¶ 34.)

9 This reports finds and recommends that **\$654.50** is a reasonable hourly rate for Ms.
10 Webb.

11 **C. Reasonable Rates for Paralegals**

12 Plaintiff seeks a flat hourly rate of \$165 for legal assistant Dayan Garcia, legal
13 assistant Kathleen Sheppard and paralegal Rudy Ponce. All are employed at LAS. No
14 information is given on each individual's qualifications, skills or experience. (Ho Decl. ¶¶
15 63-65; Ho Suppl. Decl. ¶¶ 36, 38.) In this action, Ms. Garcia and Ms. Sheppard provided
16 litigation support throughout this case including, among other things, conducting initial
17 review of and coding Defendants' document productions by type and issue, preparing
18 Plaintiff's documents for production; helping identify, prepare, and organize exhibits for
19 oppositions to summary judgment and trial; and preparing subpoenas for trial. (Ho Suppl.
20 Decl. ¶ 36.) Ms. Ponce provided paralegal support throughout this case including, among
21 other things, assuming principal responsibility for overseeing exhibits at trial, including the
22 use of technical equipment, and for tracking the status of exhibits to be offered, ruled upon,
23 and/or admitted; conducting initial review of and coding Defendants' document productions
24 by type and issue; preparing Plaintiff's documents for production. (Ho Suppl. Decl. ¶ 38.)

25 The November 23 Order directed LAS's supplemental declaration to set forth the
26 qualifications and experience of each paralegal for whom fees are sought. (November 23

Order ¶ 6.) Given the lack of showing on their qualifications, skills and experience, this report adopts the rate urged by Defendants for Ms. Garcia, Ms. Sheppard and Ms. Ponce. The report finds that \$150 is the reasonable hourly rate in light of Plaintiff's evidentiary gap.

III SCOPE OF LITIGATION AND REASONABLE HOURS

In the opening papers, Plaintiff's lead counsel declared this action was "intensively litigated" from the outset and throughout. (Ho Decl. ¶28.) It is not hard to see why. Plaintiff filed his lawsuit on December 9, 2013. (Dkt. 1.) Within twenty-one months, judgment was entered in Plaintiff's favor because he proved his Title VII disparate impact claims against two institutional defendants after a six-day bench trial. (Dkt. 263, Dkt. 278.) LAS brought Plaintiff's disparate impact and constitutional claims to trial in eighteen months. This is no small feat.

Hitting the highlights, LAS summarized the scope of this litigation in the opening papers. (Dkt. 296, Motion for Award of Reasonable Attorney's Fees and Expenses 9-17 "Mot.") There were: (1) four motions to dismiss and two motions for leave to amend at the pleadings stage, with the Third Amended Complaint ordered filed nearly eleven months into the case finally framing the issues for trial (Ho Decl. ¶ 28); (2) highly document-intensive discovery into the background checks of forty-two other CDCR job applicants that was needed to prove up Title VII disparate impact (Ho Decl. ¶ 31), (3) eight sets of interrogatories, document requests and requests for admissions served by Plaintiff on each Defendant (Mot. 12); (4) nine depositions taken by Plaintiff and seven taken by Defendants (Mot. 12); (5) many required areas of expert testimony with six expert witnesses retained by Plaintiff (Ho Decl. ¶ 27a-f); (6) five motions for summary judgment (Mot. 12-14); (7) trial preparations with a six-day bench trial (Mot. 14-15); and (8) post-trial proceedings, including the proposed findings of fact and conclusions of law, briefing and hearing on remedies and this fee application (Mot. 16-17). With two separate opportunities to respond, Defendants do not dispute the "intensively litigated" nature and course of this action.

1 Instead, in passing, CDCR complains about the “over-litigation of claims against the state
2 government.” (Dkt. 318, CDCR Defendants’ Opposition to Plaintiff’s Supplemental
3 Declaration 6 “CDCR 2nd Opp.”) CDCR, however, does not explain what aspects of LAS’s
4 representation or the court proceedings were excessive, wasteful, duplicative or unnecessary.

5 Now, Plaintiff seeks compensation for **3,347.1 hours** claimed by eight LAS
6 timekeepers, split between **2,630.5 attorney hours** and **716.6 paralegal hours**.
7 Additionally, Plaintiff seeks compensation for **19.25 hours** claimed by Mr. Pearl for this fee
8 application. (Ho Suppl. Decl. ¶ 42; Dkt. 315-14, Exh. N pg. 2.) In response to the
9 November 23 Order, requiring Plaintiff’s attorneys to detail “all attorney and paralegal time
10 sought to be recovered”, Mr. Ho’s supplemental declaration states LAS is not currently
11 seeking compensation for hours expended after October 26, 2015. (November 23 Order ¶ 3;
12 Ho Suppl. Decl. ¶ 8.)

13 Before this report gets granular and dissects the reasonableness of hours expended on
14 a project-by-project basis, two preliminary questions warrant attention. First, has LAS
15 shown proof of billing judgment? Second, what percentage of each project undertaken by
16 LAS is recoverable because the hours claimed were on issues for which fees are awardable?

17 **A. Exercise of Billing Judgment**

18 Court awarded fees should exclude hours that were not reasonably expended. “Cases
19 may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the
20 prevailing party is expected to exercise billing judgment, via making a good-faith effort to
21 exclude hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in
22 private practice ethically is obligated to exclude such hours from his fee submission.”
23 *Hensley*, 461 U.S. at 434. The November 23 Order states LAS’s supplemental declaration
24 must set forth proof of billing judgment, describing “adjustments made to eliminate
25 duplication, excess, associate-turnover expense, and so forth. These adjustments need not
26 be itemized but totals for the amount deleted per timekeeper should be stated.” (November

23 Order ¶ 6.)

In response, LAS filed Mr. Ho's supplemental declaration with a section entitled "Exercise of Billing Judgment." It included two charts listing time spent on this action by LAS staff and volunteers for whom compensation is not sought, broken down by timekeeper. (Dkt. 315 ¶ 16; Dkt. 316-2 ¶ 16.) One chart listed eight staff attorneys and three support staff who each clocked time ranging from 22.6 hours to 12 minutes. This chart also included twelve law students and volunteer attorneys who each clocked time ranging from 261.1 hours to 1.4 hours. In total, this first chart listed 1,242.6 "billable" hours from twenty-three timekeepers (most were LAS volunteers) for whom compensation is not sought. While this report appreciates that many people spent many hours helping Mr. Guerrero obtain relief, the proof of billing judgment required by the November 23 Order was focused on the eight LAS timekeepers in Plaintiff's opening papers "for whom fees are sought." (November 23 Order ¶ 6.)

Mr. Ho's supplemental declaration on the "Exercise of Billing Judgment" also had a second chart purportedly listing the number of hours not claimed for each of the eight LAS timekeepers for whom fees are sought. (Dkt. 316-2 ¶ 16.) Confusingly, within this second chart, the number of hours not claimed per timekeeper is way off when compared to two other summary charts within Plaintiff's evidentiary submission appearing to show the same type of information. (*Compare* Dkt. 316-2 ¶ 16 *with* Dkt. 296-1 Exh. B pg. 4 *with* Dkt. 315-15 Exh. O pg. 2.) These and other discrepancies within the cited summary charts call into question not just LAS's exercise of billing judgment, but also its time/fee accounting system and the various calculations it performed for this fee application. This prompted the undersigned to issue the Order re Summaries and Awards, asking Plaintiff to submit summary charts reflecting the all important Exhibit A at Dkt. 315-1—the LAS billing records broken down on a project-by-project basis. The order requested:

One master summary chart of total time and fees sought for each of the eight individual timekeepers (not broken down by project) with a grand total matching plaintiff's December 11, 2015, request of \$1,606,857.40 based on 3,347.1 hours in Exhibit A (Dkt. 315-1, filed Dec. 11, 2015). For each of the eight individual timekeepers, totals for time not sought in plaintiff's fee request should be stated.

Mini-summary charts of total time and fees sought per individual timekeeper broken down on a project-by-project basis corresponding to the listing of projects in Exhibit A (Dkt. 315-1, filed December 11, 2015).

(Dkt. 346.) Plaintiff's responsive charts are attached hereto at Exhibits 1 and 2, respectively. In the Master Summary Chart of Total Time and Fees Sought for Eight Individual Timekeepers, the numbers on "Hours Not Sought" either exactly or closely match the "Not-Claimed Time" line itemized and subtotaled per timekeeper within billing records initially filed with Mr. Ho's opening declaration. (Dkt. 300, Exh. C pgs. 243-302.) To illustrate:

Name	Hours Not Sought	Not-Claimed Time	Dkt. 300, Exh. C
Alexis Alvarez	4.5	4.5	pg. 244
Marsha Chien	190.9	198.8	pg. 253
Dayan Garcia	55.3	55.3	pg. 255
Christopher Ho	190.0	192.8	pg. 290
William McNeill	13.1	13.1	pg. 302
Rudy Ponce	10.3	11.1	pg. 299
Kathleen Sheppard	17.1	21.2	pg. 297
Diane Webb	18.8	18.8	pg. 257

The Master Summary Chart states a combined 500 hours from the eight LAS timekeepers were not sought in this fee application. (Exh. 1 attached hereto.) This represents a **write down of 12.9%** to reach the 3,347.1 hours claimed by LAS for compensation (500 divided by 3,847.1 equals 0.12996).

B. Percentage Recoverable and Relatedness of Claims

1 The November 23 Order states “[f]or each project, the declaration must further state,
2 in percentage terms, the proportion of the project directed at issues for which fees are
3 awardable and must justify the percentage. This percentage should then be applied against
4 the project total to isolate the recoverable portion.” (November 23 Order ¶ 4.) Here,
5 Plaintiff submits that all time for which he seeks compensation is awardable. (Ho Suppl.
6 Decl. pg. 6.) Specifically, Plaintiff contends that his successful and unsuccessful claims are
7 all related under the controlling legal test of (1) claims based on a common core of facts and
8 related legal theories and (2) claims that are not distinctly different due to different facts and
9 legal theories. (Mot. 25-26.) The legal test for relatedness is discussed in Section IV.A
10 below.

11 CDCR concedes that Plaintiff’s successful and unsuccessful claims against it are
12 related. All arise from CDCR’s background investigation of Mr. Guerrero. (CDCR Opp. 8-
13 9.) While SPB joins in CDCR’s opposition, SPB separately contends that the Title VII and
14 procedural due process claims against it are wholly unrelated. SPB posits that the “sole
15 factual basis” for the Title VII claim was SPB’s failure to reverse CDCR’s decision, whereas
16 the due process claim “focused on a separate course of conduct: the procedures utilized by
17 SPB in adjudicating his appeal.” (SPB Opp. 9-10 (“Rather, SPB’s conduct found unlawful
18 by the court under Title VII was failing to correct CDCR’s error, not in any deficiency in the
19 process under which SPB conducted its review”).)

20 Not only is SPB splitting hairs, it is incorrect. Plaintiff’s unsuccessful procedural
21 due process claim against SPB is related to his successful Title VII claim. The Court
22 specifically found that SPB’s procedures as applied to Mr. Guerrero were unlawful under
23 Title VII. After the six-day bench trial, the Court made factual findings on (1) SPB’s
24 general procedures for handling appeals from CDCR decisions and (2) how SPB specifically
25 handled Mr. Guerrero’s appeal without scheduling an “evidentiary hearing before an
26 administrative law judge” or taking “any action at all” regarding his written claim that

1 CDCR unlawfully discriminated against him. (FFCL ¶¶ 28-29, 42-43.) Significantly, the
 2 Court's conclusions of law held:

3 This order further finds that ***SPB violated Title VII in handling***
 4 ***Guerrero's appeal***. CDCR's and ***SPB's inadequate assessment*** is further
 5 evidenced by their reliance on mistaken assumptions, such as the belief
 6 that ITINs can be used for employment purposes, that use of both an ITIN
 7 and a SSN somehow showed unlawful conduct, and the statement that
 8 Guerrero had committed identity theft. Nor have defendants proven that
 9 Guerrero's SSN misuse is "significantly job-related" to the corrections
 10 officer position. *Rather than individually assessing Guerrero's*
 11 ***application and properly weighing all relevant factors***, defendants
 12 *inappropriately used Question 75 as a showstopper.*

13 (FFCL 22 (emphasis added).) Two months later, in deciding relief, the Court reiterated that
 14 SPB's inadequate handling and assessment of Plaintiff's administrative appeal violated Title
 15 VII:

16 In Guerrero's case, defendants violated Title VII by failing to properly
 17 consider the recency, relevancy, and severity of Guerrero's prior invalid
 18 SSN use, factors required by the Equal Employment Opportunity
 19 Commission's guidelines. Instead, CDCR and SPB conclusively
 20 dismissed Guerrero's application without considering those factors.
 21 Consequently, defendants violated Title VII.

22 (Order re Relief 2.) In sum, Plaintiff's unsuccessful procedural due process claim against
 23 SPB is related to his successful Title VII claim.

24 Where, as here, a plaintiff's claims for relief involved a common core of facts or was
 25 based on related legal theories, "[m]uch of counsel's time will be devoted generally to the
 26 litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim
 basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district
 court should focus on the significance of the overall relief obtained by the plaintiff in
 relation to the hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 435.

Focus on the overall results achieved is addressed below in Section IV.B.

This reports finds that, where it would have been difficult, it was reasonable for LAS
 to not break down each project claim-by-claim into recoverable and non-recoverable

percentages and/or hours. Because Plaintiff is entitled to fees on fees, having his counsel undertake the laborious and time-consuming task of breaking down each project claim-by-claim may not be cost effective, and may ignite over-litigation on this fee motion with potential fees on fees eclipsing the fees for any project during the parties' merits litigation.

C. Project-By-Project with Line Item Analysis for Project Fees

The party seeking the award of fees bears the burden of submitting billing records detailing the hours spent. Courts may reduce the award where the records do not justify the hours spent. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). Courts may reduce the amount of hours billed in the event that the court is unable to determine whether all time in the entries was reasonably expended. *Mendez v. County of San Bernardino*, 540 F.3d 1109, 1128-1129 (9th Cir. 2008). "The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits." *Gates*, 987 F.2d at 1397.

Plaintiff's fee application contains two key exhibits with billing records documenting time expended and fees incurred. Entries are in one-tenths of an hour (six-minute increments). (Dkt. 300, Exh. C; Dkt. 315-1, Exh. A.) Submitted with Plaintiff's opening papers, the first exhibit is organized by timekeeper with time entries and task descriptions listed chronologically. Defendants opposed the opening papers, but neither addressed the organization or adequacy of the billing records as a whole, nor specifically attacked the line-item time/task entries for billing judgment. Thereafter, the November 23 Order required Plaintiff's counsel to re-organize and re-submit its billing records on a project-by-project basis:

For each project, there must be a detailed description of the work, giving the date, hours expended, attorney name, and task for each work entry, in chronological order. A "project" means a deposition, a motion, a witness interview, and so forth. It does not mean generalized statements like "trial

preparation” or “attended trial.” It includes discrete items like “prepare supplemental trial brief on issue X.”

All entries for a given project must be presented chronologically one after the other, *i.e.*, uninterrupted by other projects, so that the timeline for each project can be readily grasped. Entries can be rounded to the nearest quarter-hour and should be net of write-down for inefficiency or other cause. Please show the sub-totals for hours and fees per project, as in the example above, and show grand totals for all projects combined at the end. Include only entries for which compensation is sought, *i.e.*, after application of “billing judgment.”

(November 23 Order ¶¶ 3-4.) Given that numerous projects had many chronological entries for various timekeepers with small increments of time, the undersigned asked Plaintiff’s counsel to submit mini-summary charts of total time and fees sought per individual timekeeper broken down on a project-by-project basis corresponding to its list of projects. Plaintiff’s supplemental submission is attached hereto as Exhibit 2 (“Mini-Charts”).

The November 23 Order also required Defendants to engage in an evidence-backed counter-analysis of Plaintiff’s billing records:

If the opposing party contends that any item or project was excessive, then the opposition must explain why and provide a *declaration setting forth completely all time expended by the opposing party on the same and on similar projects, in the same format described above, so that symmetry may be considered*, making available the underlying records for inspection if requested.

The opposing declaration must also state, as to each project, the percentage of the project the opposition contends was directed at issues on which fees are awardable, stating reasons for the percentage. This percentage should then be applied against the project total to isolate the recoverable portion.

The opposing submissions may not simply attack the numbers in the application. It must also set forth a counter-analysis. The counter-analysis should be in the same format required of the applicant, arriving at a final number. The opposition must clearly identify each line item in the application challenged as excessive, improper or otherwise unrecoverable and explain why.

(November 23 Order ¶¶ 8-9 (emphasis added).)

Before determining what are reasonable hours for each project in light of Defendants’ specific objections, this report addresses two broader arguments raised by

1 Defendants. First, Defendants contend that fees for state-law claims should not be awarded,
2 because the Court *sua sponte* dismissed the state-law claims based on the Eleventh
3 Amendment (after negligible litigation by the parties). Thereafter, Plaintiff commenced a
4 state court action based on those claims. (CDCR 2nd Opp. 9-10.) Defendants note that the
5 fees on the state-law claims are more appropriately dealt with in any fee award by the state
6 court, if Plaintiff is ultimately successful there. This report agrees. Where easily
7 identifiable within Plaintiff's billing records, time spent on the state-law claims will be
8 excised.

9 Second, Defendants argue that certain discovery projects should be reduced by
10 thirty-five percent (35%) to reflect that discovery in this action will also be used in
11 Plaintiff's parallel cases at two other forums—San Francisco Superior Court and the Office
12 of the Chief Administrative Hearing Officer at the U.S. Department of Justice. (CDCR 2nd
13 Opp. 10.) This report disagrees. Implicit in Defendants' apportionment request is the
14 recognition that the discovery in these certain projects was relevant to this litigation and
15 contributed to Plaintiff's Title VII victory here. Moreover, Defendants cite no legal
16 authority for their apportionment contention. (CDCR 2nd Opp. 10; Young Suppl. Decl. ¶¶
17 17-18.) If Plaintiff prevails at the other two forums, this report is confident that Defendants
18 will object if Plaintiff—inadvertently or not—attempts to seek double recovery for the same
19 discovery projects.

20 Moving on to the heart of this matter, below are this report's findings of reasonable
21 hours and fees for each project. They are based on an analysis of, among other things, the
22 project-by-project line-item time/task entries, the mini-summary charts of total time and fees
23 sought per timekeeper for each project and Defendants' objections. Given the sheer volume
24 of line items reviewed, this report does not discuss each and every time/task entry
25 Defendants objected to, although the undersigned has carefully reviewed each objection and
26 disputed time/task entry. References to time/task entries are all to Plaintiff's billing records

at Dkt. 315-1, Exhibit A. Where applicable, the subtotal fees for each project has been recalculated in light of the reasonable hourly rates found in Section II above.

Project No. 1 – Fact Investigation

LAS states this project involved intake interviews with Mr. Guerrero, research of publicly available facts concerning Defendants and investigation into demographics issues.³ LAS billed 15.4 hours and requests \$8,958.40. Defendants lodged no objections.

This report finds the requested **\$8,958.40** is reasonable.

Project No. 2 – Analysis of Potential Claims

LAS states this project involved legal research concerning possible Title VII, federal constitutional and other claims. LAS billed 49.8 hours and requests \$21,234. Defendants object to numerous line-item entries, arguing almost all of those are unrecoverable as related to Plaintiff's state-law claims. SPB also objects, arguing all time expended on Plaintiff's unsuccessful due process claim are unrecoverable. (Dkt. 320, Declaration of Dorothy Bacskai in Support of State Personnel Board Defendants' Opposition 4 "SPB 2nd Opp.")

This report makes a \$10,074.75 reduction and finds **\$11,159.25** is reasonable. For the reasons stated in this Section III.C, this report excised clearly identifiable time entries tied to the state-law claims. For the reasons stated in Section III.B, this report rejects SPB's objection on the due process claim.

Mr. Ho's entries of 5/21/2013 and 7/17/2013 are denied for vagueness. The former is on discussions without identifying with whom. The latter does not describe the legal issue researched and should not be compensable. Mr. Chien's entries of 1/18/2013, 1/22/2013, 5/21/2013, 5/29/2013, 5/30/2013, 6/3/2013, 8/20/2013, 8/27/2013, 9/11/2013, 9/19/2013 and 10/9/2013 are all disallowed as devoted to the state-law claims. Mr. McNeill's entry of 10/7/2013 and Mr. Ho's entry of 8/27/2013 are denied as devoted to the state-law claims.

³ Plaintiff's summary description for each project is from Mr. Ho's supplemental declaration in response to the November 23 Order. (Dkt. 316-2, pgs. 6-18.)

Ms. Chien's entry of 5/22/2013 and Mr. Ho's entries of 5/22/2013 and 10/9/2013 all contain a list of recoverable and unrecoverable subjects. Time billed to those entries was reduced by 66%, 66% and 50%, respectively.

Project No. 3 – Initial Complaint

LAS states this project involved working on the initial complaint, including drafting and revisions. LAS billed 26 hours and requests \$13,445.80. CDCR objects to one entry as unrelated to this project. This report agrees. SPB objects to two entries, contending they are unrecoverable as related to Plaintiff's administrative appeal before SPB.

The report makes a \$878.90 reduction and finds **\$12,566.90** is reasonable. Mr. McNeill's entries of 10/7/2013, 10/8/2013 and 10/9/2013 are denied for vagueness. The subject(s) of the email correspondence are not described and, thus, should not be compensable. Ms. Ponce's entry of 2/27/2014 is not for this project, and occurred over two months after service of the initial complaint and summons on Defendants. For the reasons discussed below in Project No. 91, this report overrules SPB's objection on Plaintiff's administrative appeal before SPB.

Project No. 4 – First Amended Complaint

LAS states this project involved revising the "original complaint to correct technical errors." (Ho Suppl. Decl. 7.) LAS billed 10.4 hours and seeks \$6,851.60. Defendants object to this entire project, arguing any technical errors on LAS's part should not be chargeable to them. This report agrees.

This report finds no reasonable fees should be awarded.

Project No. 5 – Second Amended Complaint

LAS states this project involved reviewing Defendants' Rule 12(b)(6) motions to dismiss the First Amended Complaint; meeting and conferring with Defendants regarding stipulations to filing of Second Amended Complaint and drafting the Second Amended Complaint. LAS billed 24.6 hours and seeks \$13,004.40. Defendants object to several

1 entries as unrelated to this project. SPB also objects to any work tied to Plaintiff's
2 unsuccessful due process claim.

3 The report makes a \$2,525.90 reduction and finds **\$10,478.50** is reasonable. Mr.
4 Ho's entries of 4/14/2014, 4/15/2014 and 4/16/2014 are not for this project. SPB's objection
5 was rejected in Section III.B above.

6 **Project No. 6 – Initial Disclosures**

7 LAS states this project involved reviewing Plaintiff's documents for possible
8 disclosure; making and drafting initial disclosures and reviewing Defendants' initial
9 disclosures. LAS billed 16.4 hours and requests \$9,120.30. CDCR objects to one entry as
10 unrelated to this project. CDCR also objects, arguing the total fees should be reduced by
11 35% because the evidence will be used in two parallel actions in other forums. This
12 objection was rejected in this Section III.C.

13 The report makes a \$980.20 reduction and finds **\$8,140.10** is reasonable. Mr.
14 McNeill's entry of 3/29/2014 does not describe the email correspondence and, thus, should
15 not be compensable.

16 **Project No. 7 – Supplemental Disclosures**

17 LAS states this project involved producing supplemental disclosures and reviewing
18 supplemental disclosures from Defendants. LAS billed 3.6 hours and requests \$1,288.80.
19 CDCR's sole objection is the same 35% discovery reduction, which has been rejected.

20 This report finds the requested **\$1,288.80** is reasonable.

21 **Project No. 8 – Case Management Conferences**

22 LAS states this project involved work related to case management conferences,
23 including drafting such statements and participating in case management conferences. LAS
24 billed 9.3 hours and requests \$4,430.10. Defendants lodged no objections.

25 This report finds the requested **\$4,430.10** is reasonable. Paralegal fees were not re-
26 calculated using the \$150 reasonable rate, because the implicit hourly rates LAS used for

1 Ms. Sheppard in this project is \$150. (Dkt. 315-1, pg. 12; Mini-Charts 1.)

2 **Project No. 9 – Plaintiff's Document Productions**

3 LAS states this project involved the review of Defendants' requests for production of
4 documents, review of Plaintiff's documents for possible production and drafting of
5 objections and responses. LAS billed 17.4 hours and requests \$3,527.80. CDCR's sole
6 objection is the same 35% discovery reduction, which has been rejected.

7 This report makes a \$940.20 reduction and finds **\$2,587.60** is reasonable. Ms.
8 Chien's entry of 7/16/2014 is disallowed. It is unclear how the task is related to Plaintiff's
9 document production(s). Ms. Garcia's fees were not re-calculated using the \$150 reasonable
10 rate, because the average implicit hourly rate LAS used for her in this project is below \$150.
11 (Dkt. 315-1, pg. 13; Mini-Charts 2.) Ms. Ponce's fees were re-calculated at the \$150 rate
12 found in Section II.C above. (Mini-Charts 2.)

13 **Project No. 10 – Review, Analyze and Code Defendants' Document Productions**

14 LAS states this project involved reviewing Defendants' document productions,
15 including document analysis and issue coding. LAS billed 207.7 hours and requests
16 \$40,271.10. CDCR's sole objection is the same 35% discovery reduction, which has been
17 rejected. Neither defendant objected to the billed hours as excessive or clerical. Indeed,
18 only 21.2 hours were billed by attorneys. The remaining 186.5 hours were billed by
19 paralegals. This report praises LAS for using one paralegal to do the vast majority of
20 document review.

21 This report makes a \$2,246.70 reduction and finds **\$38,024.40** is reasonable. Ms.
22 Sheppard's entry of 9/4/2013 is disallowed as erroneous. Plaintiff's action was filed on
23 December 9, 2013. Ms. Sheppard's entries of 7/18/2014, 7/20/2014 and 7/21/2014 are
24 denied as not for this project. Ms. Sheppard's fees were not re-calculated using the \$150
25 reasonable rate, because the implicit hourly rates LAS used for her in this project are at or
26 below \$150 per hour. (Dkt. 315-1, pg. 13-26; Mini-Charts 2.) Ms. Ponce's 25.3 hours is re-

1 calculated at the \$150 rate found in Section II.C above. (Mini-Charts 2.)

2 **Project No. 11 – On-Site Review of Defendants’ Documents**

3 LAS states this project involved discussions with SPB regarding the onsite review of
4 appeals files and conducting such onsite review. LAS billed 33.3 hours (including travel to
5 Sacramento) and seeks \$7,768. CDCR’s sole objection is the same 35% discovery
6 reduction, which has been rejected. SPB lodged no objection.

7 This report finds the requested **\$7,768** is reasonable.

8 **Project No. 12 – CDCR'S Motion to Dismiss FAC**

9 LAS states this project involved reviewing CDCR’s motion to dismiss the First
10 Amended Complaint. LAS billed 5.6 hours and requests \$3,113.60. CDCR lodged no
11 objections.

12 This report finds the requested **\$3,113.60** is reasonable.

13 **Project No. 13 – SPB’s Motion to Dismiss FAC**

14 LAS states this project involved reviewing SPB’s motion to dismiss the First
15 Amended Complaint. LAS billed 2.2 hours and requests \$1,621.10. SPB lodged no
16 objections.

17 This report finds the requested **\$1,621.10** is reasonable.

18 **Project No. 14 – CDCR’s Motion to Dismiss SAC**

19 LAS states this project involved researching, drafting and finalizing Plaintiff’s
20 opposition to CDCR’s motion to dismiss the Second Amended Complaint. LAS billed 70.1
21 hours and requests \$32,142.70. CDCR lodged no objections. Curiously, SPB objects to any
22 work within this project on Plaintiff’s unsuccessful due process claim, but SPB does not
23 object to LAS’s fees for opposing SPB’s separate motion to dismiss (see Project No. 15).

24 This report makes a \$2,827.50 reduction and finds **\$29,315.20** is reasonable. Mr.
25 Ho’s entry of 5/1/2014 is denied as duplicative and unnecessary. He attended the hearing,
26 but Ms. Chien did the oral arguments. SPB’s objection based on the due process claim was

1 rejected in Section III.B above. Moreover, SPB cites no legal authority validating its
 2 method of determining the recoverable percentage. SPB requests a 40% reduction based on
 3 6 out of 14 pages of argument in Plaintiff's opposition. This may be an unreliable
 4 correlation to hours actually expended by LAS.

5 **Project No. 15 – SPB's Motion to Dismiss SAC**

6 LAS states this project involved researching, drafting and finalizing Plaintiff's
 7 opposition to SPB's motion to dismiss. LAS billed 41.1 hours and requests \$13,063.40.
 8 SPB lodged no objections.

9 This report makes a \$1,590 reduction and finds **\$11,473.40** is reasonable. All of Ms.
 10 Sheppard's entries are denied as not for this project. Her work is expressly tied to opposing
 11 SPB's motion for summary judgment. It also occurred five months after Ms. Chien drafted
 12 the opposition to SPB's motion to dismiss. (Dkt. 315-1, pg. 29.)

13 **Project No. 16 – Analyze and Develop Strategy Regarding Court's Order Regarding**
 14 **Motion to Dismiss SAC**

15 LAS states this project involved reviewing the Court's order granting and denying
 16 Defendants' motions to dismiss. LAS billed 8.2 hours and requests \$5,351.20. Defendants
 17 lodged no objections.

18 This report finds the requested **\$5,351.20** is reasonable.

19 **Project No. 17 – Not Used**

20 **Project No. 18 – Protective Order**

21 LAS states this project involved meeting and conferring with opposing counsel
 22 concerning the protective order applicable to discovery productions. LAS billed 4.4 hours
 23 and seeks \$1,852.40. Defendants lodged no objections.

24 This report finds the requested **\$1,852.40** is reasonable.

25 **Project No. 19 – Motion for Leave to Amend and File TAC**

26 LAS states this project involved researching, drafting and finalizing Plaintiff's

renewed motion for leave to file the Third Amended Complaint; reviewing and replying to Defendants' oppositions to same; and reviewing the Court's order granting motion to file the Third Amended Complaint. LAS billed 144.9 hours and requests \$64,458.60. CDCR lodged no objections. SPB objects, arguing all work on Plaintiff's unsuccessful bid for a due process violation and systemic injunctive relief should be denied. It identifies two specific entries.

The report makes a \$1,319.50 reduction and finds **\$63,139.10** is reasonable. Mr. Ho's entry of 7/8/2014 is denied as duplicative and unnecessary. He attended the hearing, but Ms. Chien did the oral arguments. SPB's objection based on the due process claim was rejected in Section III.B above. Likewise, SPB's objection based on work for injunctive relief is denied. Such work is related to Plaintiff's successful Title VII claim.

Project No. 20 – Oppose CDCR'S First MSJ

LAS states this project involved reviewing, researching, drafting and finalizing Plaintiff's opposition to CDCR's first motion for summary judgment. LAS billed 116.3 hours and seeks \$68,877.10. Defendants object to numerous entries as chronologically outside the timeline for this project. SPB also objects to any work tied to Plaintiff's unsuccessful due process claim.

This report makes a \$9,305.70 reduction and finds **\$59,571.40** is reasonable. All eight entries before July 8, 2014 are denied. They occurred before CDCR filed its motion for summary judgment. (Dkt. 66.) Moreover, most of these entries are not for this project. The entries of 5/14/2014 and 6/27/2014 on legal research arguably for this project is nonetheless denied. It is reasonable to do such work after seeing CDCR's motion arguments, especially since this was its first summary judgment motion. Ms. Chien's entries of 7/15/2014 and 12/8/2014 are denied as not for this project. Mr. Ho's entry of 9/30/2014 is denied as duplicative and unnecessary. He attended the hearing, but Ms. Chien did the oral arguments. Ms. Chien's entry of 12/17/2014 is denied. It occurred more than two

months after the hearing. Ms. Sheppard's implicit hourly rate for this project is already at \$150. (Mini-Charts 3.) SPB's objection based on the due process claim was rejected in Section III.B above.

Project No. 21 – Oppose SPB'S First MSJ

LAS states this project involved reviewing, researching, drafting and finalizing Plaintiff's opposition to SPB's first motion for summary judgment. LAS billed 31.6 hours and requests \$13,849.10. SPB objects to all fees for this entire project, arguing Plaintiff's opposition was devoted exclusively to his failed procedural due process claim.

This report finds the requested **\$13,849.10** is reasonable. SPB's objection based on the due process claim was rejected in Section III.B above. Moreover, while it is tempting to deny all fees for this project, this report will not do so at the risk of double counting any reduction of awardable fees vis-à-vis the extent of Plaintiff's overall success in this action. Focus on the overall results achieved is addressed below in Section IV.B.

Project No. 22 – Analyze Court's Order Denying MSJs

LAS states this project involved reviewing the Court's order denying Defendants' summary judgment motions. LAS billed 0.2 hour and requests \$150.80.

The report finds the requested **\$150.80** is reasonable.

Project No. 23 – First Settlement Conference

LAS states this project involved preparing for the initial settlement conference, including drafting submissions and reviewing of Defendants' submissions, as well as attending the conference. LAS billed 40.4 hours and requests \$26,778.80. SPB objects, arguing time expended on Plaintiff's unsuccessful claims should be denied.

This report makes a reduction of \$3,048.70 and finds **\$23,730.10** is reasonable. Mr. Ho's entry of 7/10/2014 is disallowed due to vagueness on discussions without identifying with whom. Except for the 7/15/2014 entries on conferring with Plaintiff, the rest of Ms. Chien's entries are disallowed. Her limited contribution and attendance at the settlement

1 conference appear unnecessarily duplicative of Mr. Ho's work, who also attended the
2 settlement conference and took the laboring oar in drafting Plaintiff's settlement conference
3 statement. SPB's objection based on work for injunctive relief is denied. Such work is
4 related to Plaintiff's successful Title VII claim.

5 **Project No. 24 – Analyze Defendants' Answers to TAC**

6 LAS states this project involved reviewing Defendants' Answers to the Third
7 Amended Complaint and legal research concerning same. LAS billed 0.8 hour and requests
8 \$603.20.

9 This report finds the requested **\$603.20** is reasonable.

10 **Project No. 25 – Interrogatories to CDCR**

11 LAS states this project involved reviewing and conducting needed factual inquiries,
12 drafting objections and responses to CDCR interrogatories. LAS billed 8.4 hours and
13 requests \$4,476.40. CDCR's sole objection is the same 35% discovery reduction, which has
14 been rejected.

15 This report makes a \$377 reduction and finds **\$4,099.40** is reasonable. Mr.
16 McNeill's entries on 2/25/2014 and 2/28/2014 are disallowed. The tasks seem unnecessarily
17 duplicative for interrogatories when Mr. Ho is already supervising.

18 **Project No. 26 – Interrogatories to SPB**

19 LAS states this project involved reviewing and conducting needed factual inquiries,
20 drafting objections and responses to SPB interrogatories. LAS billed 2.6 hours and requests
21 \$1,960.40. Defendants object, arguing for the same 35% discovery reduction, which has
22 been rejected. SPB also objects to any work tied to Plaintiff's unsuccessful procedural due
23 process claim, which likewise has been rejected in Section III.B above.

24 This report finds the requested **\$1,960.40** is reasonable.

25 **Project No. 27 – Requests for Production to CDCR**

26 LAS states this project involved drafting, revising and finalizing requests for

1 production of documents to CDCR. LAS billed 45.1 hours and requests \$26,004.30.

2 CDCR's sole objection is the same 35% discovery reduction, which has been rejected.

3 This report finds the requested **\$26,004.30** is reasonable.

4 **Project No. 28 – Requests for Production to SPB**

5 LAS states the project involved drafting, revising and finalizing requests for
6 production of documents to SPB. LAS billed 12.3 hours and requests \$5,945.90.

7 Defendants object, arguing for the same 35% discovery reduction, which has been rejected.

8 SPB also objects to any work tied to Plaintiff's unsuccessful procedural due process claim,
9 which likewise has been rejected in Section III.B above.

10 The report makes a \$527.80 reduction and finds **\$5,418.10** is reasonable. Mr. Ho's
11 entries on 7/30/2014 and 3/12/2015 are disallowed. The tasks appear unrelated to this
12 project.

13 **Project No. 29 – Requests for Admission CDCR**

14 LAS states this project involved drafting, revising and finalizing requests for
15 admission to CDCR. LAS billed 5.9 hours and requests \$4,252.50. CDCR's sole objection
16 is the same 35% discovery reduction, which has been rejected.

17 This report makes a \$848.25 reduction and finds **\$3,404.25** is reasonable. Mr. Ho's
18 entry of 12/7/2014 is reduced by 50%. It is unclear what the second task is and how it was
19 related to this project.

20 **Project No. 30 – Requests for Admission to SPB**

21 LAS states this project involved drafting, revising and finalizing requests for
22 admission to SPB. LAS billed 3.8 hours and requests \$2,429.60. Defendants object,
23 arguing for the same 35% discovery reduction, which has been rejected. SPB also objects to
24 any work tied to Plaintiff's unsuccessful procedural due process claim, which likewise has
25 been rejected in Section III.B above.

26 This report finds the requested **\$2,429.60** is reasonable.

Project No. 31 – Respond to CDCR’s Requests for Production

LAS states this project involved drafting and revising responses to CDCR’s requests for production. LAS billed 13.3 hours and requests \$8,363.10. CDCR’s sole objection is the same 35% discovery reduction, which has been rejected.

The report makes a \$565.50 reduction and finds **\$7,797.60** is reasonable. Mr. Ho’s entry of 2/19/2015 is disallowed due to vagueness on discussions without identifying with whom.

Project No. 32 – Not Used**Project No. 33 – Bendick Expert Report**

LAS states this project involved discussions with expert witness Dr. Bendick regarding case issues, identifying subjects of opinion including adverse impact and coordinating drafting of expert report. LAS billed 24.2 hours and requests \$11,463.80. Defendants lodged no objections.

This reports makes a \$289.90 reduction and finds **\$11,173.90** is reasonable. Ms. Sheppard’s entry on 1/23/2015 has been excised. Her work was clerical and not legal in nature. Mr. McNeill’s entry on 9/29/2014 is disallowed. His review of an email between Mr. Ho and Dr. Bendick seems unnecessary.

Project No. 34 – Hausknecht Expert Report

LAS states this project involved discussions with expert witness Professor Hausknecht regarding case issues, identifying subjects of opinion including alternatives to Question 75 and coordinating drafting of expert report. LAS billed 11.8 hours and requests \$8,897.20. Defendants lodged no objections.

This report makes a \$603.20 reduction and finds **\$8,294** is reasonable. Mr. McNeill’s entry on 12/30/2014 is disallowed per the “Should be no charge” notation. He was reviewing an expert retainer letter. Mr. Ho’s entry on 3/24/2015 for emails with experts and internal discussions both regarding travel dates/logistics is disallowed as administrative

1 work not legal in nature.

2 **Project No. 35 – Kurlychek Expert Report**

3 LAS states this project involved discussions with expert witness Professor Kurlychek
4 regarding case issues, identifying subjects of opinion including job-relatedness of Question
5 75 and coordinating drafting of expert report. LAS billed 14.4 hours and requests
6 \$8,421.50. Defendants lodged no objections.

7 The report makes a \$693 reduction and finds **\$7,728.50** is reasonable. Ms.
8 Sheppard's entry on 1/26/2015 is disallowed. Her work was clerical and not legal in nature.

9 **Project No. 36 – Vasquez Expert Report**

10 LAS states this project involved discussions with expert witness Mr. Vazquez
11 regarding case issues, identifying subjects of opinion including Plaintiff's suitability for hire
12 by CDCR and coordinating drafting of expert report. LAS billed 21.5 hours and requests
13 \$15,856.50. Defendants lodged no objections.

14 This report finds the requested **\$15,856.50** is reasonable.

15 **Project No. 37 – Hing Expert Report**

16 LAS states this project involved discussions with expert witness Professor Hing
17 regarding case issues, identifying subjects of opinion including Plaintiff's immigration
18 history and coordinating drafting of expert report. LAS billed 11.4 hours and requests
19 \$5,467.20. Defendants lodged no objections.

20 This report finds the requested **\$5,467.20** is reasonable.

21 **Project No. 38 – Chen Expert Report**

22 LAS states this project involved discussions with expert witness Professor Chen
23 regarding case issues, identifying subjects of opinion including Plaintiff's filing of tax
24 returns using his ITIN and coordinating drafting of expert report. LAS billed 6.3 hours and
25 requests \$3,285. Defendants lodged no objections.

26 This report finds the requested **\$3,285** is reasonable.

Project No. 39 – Prepare for and Depose R. O’Brien (Two Depositions)

LAS states this project involved preparing for and taking two depositions of CDCR’s Rule 30(b)(6) witness and proffered expert witness. LAS billed 55.8 hours (including travel to Sacramento) and requests \$37,825.90. CDCR’s sole objection is the same 35% discovery reduction, which has been rejected.

This report makes a \$640.90 reduction and finds **\$37,185** is reasonable. Mr. Ho’s entries on 2/2/2015 and 2/5/2015 are disallowed due to vagueness on discussions without identifying with whom. Mr. McNeill’s entry on 2/18/2015 is deleted for apparently unnecessary review of emails between Mr. Ho and Defendants’ counsel. Paralegal fees were not re-calculated using the \$150 reasonable rate, because the implicit hourly rates LAS used for Ms. Ponce and Ms. Sheppard in this project are at or below \$150 per hour. (Dkt. 315-1, pg. 50-52; Mini-Charts 5.)

Project No. 40 – Deposition of D. Starnes

LAS states this project involved preparing for and taking the deposition of CDCR’s proffered expert witness. LAS billed 13.7 hours and requests \$8,798.40. CDCR’s sole objection is the same 35% discovery reduction, which has been rejected.

This report makes a \$39 reduction and finds **\$8,759.40** is reasonable. The reduction is for 2.6 paralegal hours re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 5.)

Project No. 41 – Deposition of V. Myers

LAS states this project involved preparing for and taking the deposition of a named CDCR defendant and background investigator. LAS billed 22.3 hours (including travel) and requests \$8,737.70. CDCR’s sole objection is the same 35% discovery reduction, which has been rejected.

This reports makes a \$188.50 reduction and finds **\$8,549.20** is reasonable. Mr. Ho’s entry on 7/11/2014 is disallowed for vagueness.

Project No. 42 – Deposition of D. Sharp

LAS states this project involved preparing for and taking the deposition of a named CDCR defendant and background investigator. LAS billed 11.1 hours and requests \$7,485.90. CDCR's sole objection is the same 35% discovery reduction, which has been rejected.

This report makes a \$22.50 reduction and finds **\$7,463.40** is reasonable. The reduction is for 1.5 paralegal hours re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 5.)

Project No. 43 – Prepare for and Depose J. Dumond

LAS states this project involved preparing for and taking the deposition of CDCR's expert witness and labor economist. LAS billed 32.4 hours and requests \$15,284. Defendants lodged no objections.

This report makes a \$156.80 reduction and finds **\$15,127.20** is reasonable. Mr. McNeill's entry of 2/9/2015 is disallowed. It is unclear how his work was related to this project. Ms. Ponce's 0.4 hour is re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 5.)

Project No. 44 – Prepare for and Depose B. Leashore

LAS states this project involved preparing for and taking the deposition of a named SPB defendant and personnel analyst. LAS billed 15.6 hours (including travel) and requests \$5,657. Defendants object, arguing for the same 35% discovery reduction, which has been rejected. SPB also objects to any work tied to Plaintiff's unsuccessful procedural due process claim, which likewise has been rejected in Section III.B above.

The report makes a \$21 reduction and finds **\$5,636** is reasonable. Ms. Ponce's 1.4 hours is re-calculated at the \$150 rate found in Section II.C above. Ms. Sheppard's implicit hourly rate for this project is already at \$150. (Mini-Charts 5.)

Project No. 45 – Prepare for and Depose C. Lopez

1 LAS states this project involved preparing for and taking the deposition of SPB's
 2 Rule 30(b)(6) witness. LAS billed 12.3 hours (including travel) and requests \$4,446.90.
 3 Defendants object, arguing for the same 35% discovery reduction, which has been rejected.
 4 SPB also objects to any work tied to Plaintiff's unsuccessful procedural due process claim,
 5 which likewise has been rejected in Section III.B above.

6 The report makes a \$6 reduction and finds **\$4,440.90** is reasonable. Ms. Ponce's 0.4
 7 hour is re-calculated at the \$150 rate found in Section II.C above.

8 **Project No. 46 – Prepare for and Depose P. Ramsey**

9 LAS states this project involved preparing for and taking the deposition of SPB's
 10 Rule 30(b)(6) witness and Chief of Appeals Unit. LAS billed 18.3 hours (including travel)
 11 and requests \$7,029.40. Defendants object, arguing for the same 35% discovery reduction,
 12 which has been rejected. SPB also objects to any work tied to Plaintiff's unsuccessful
 13 procedural due process claim, which likewise has been rejected in Section III.B above.

14 The report finds the requested **\$7,029.40** is reasonable. Ms. Sheppard's implicit
 15 hourly rate for this project is already at \$150. (Mini-Charts 5.)

16 **Project No. 47 – Prepare for and Depose M. Lagrandeur**

17 LAS states this project involved preparing for and taking the deposition of SPB's
 18 Rule 30(b)(6) witness. LAS billed 12.6 hours (including travel) and requests \$4,416.30.
 19 Defendants object, arguing for the same 35% discovery reduction, which has been rejected.
 20 SPB also objects to any work tied to Plaintiff's unsuccessful procedural due process claim,
 21 which likewise has been rejected in Section III.B above.

22 The report makes a \$239.30 reduction and finds **\$4,177** is reasonable. Mr. Ho and
 23 Ms. Ponce's entries of 12/30/2014 are disallowed due to an apparent error. Ms. Ponce's
 24 entry on 1/5/2015 is deleted, because it is clerical and not legal in nature. Ms. Ponce's 0.4
 25 hour on 12/29/2014 is re-calculated at the \$150 rate found in Section II.C above.

26 **Project No. 48 – Prepare for and Defend Plaintiff's Deposition**

1 LAS states this project involved preparing Plaintiff for deposition and defending his
2 deposition. LAS billed 32.3 hours (including travel) and requests \$14,364.70. CDCR's sole
3 objection is the same 35% discovery reduction, which has been rejected. SPB lodges no
4 objections.

5 The report makes a \$28.50 reduction and finds **\$14,336.20** is reasonable. Ms.
6 Ponce's 1.9 hours is re-calculated at the \$150 rate found in Section II.C above.

7 **Project No. 49 – Prepare for and Make Record at M. Bendick Deposition**

8 LAS states this project involved preparing expert witness Dr. Bendick for deposition
9 and defending his deposition. LAS billed 32.4 hours and requests \$18,727.20. Defendants
10 lodged no objections.

11 This report finds the requested **\$18,727.20** is reasonable.

12 **Project No. 50 – Prepare for and Make Record at D. Vasquez Deposition**

13 LAS states this project involved preparing expert witness Mr. Vasquez for his
14 deposition and defending his deposition. LAS billed 9.0 hours and requests \$6,550.40.
15 Defendants lodged no objections.

16 This report finds the requested **\$6,550.40** is reasonable.

17 **Project No. 51 – Prepare for and Make Record at J. Hausknecht Deposition**

18 LAS states this project involved preparing expert witness Professor Hausknecht for
19 his deposition and defending his deposition. LAS billed 23.7 hours (including travel to New
20 York) and requests \$17,832.10. Defendants lodged no objections.

21 This report finds the requested **\$17,832.10** is reasonable.

22 **Project No. 52 – Prepare for and Make Record at M. Kurlychek Deposition**

23 LAS states this project involved preparing expert witness Professor Kurlychek for
24 her deposition and defending her deposition. LAS billed 20.3 hours (including travel to
25 New York) and requests \$15,306.20. Defendants lodged no objections.

26 This report finds the requested **\$15,306.20** is reasonable.

Project No. 53 – Prepare for and Make Record at B. Hing Deposition

LAS states this project involved preparing expert witness Professor Hing for his deposition and defending his deposition. LAS billed 4.4 hours and requests \$1,812.80. Defendants lodged no objections.

This report finds the requested **\$1,812.80** is reasonable.

Project No. 54 – Prepare for and Make Record at C. Chen Deposition

LAS states this project involved preparing expert witness Professor Chen for her for deposition and defending her deposition. LAS billed 5.0 hours and requests \$1,790. Defendants lodged no objections.

This report finds the requested **\$1,790** is reasonable.

Project No. 55 – Oppose CDCR'S Second MSJ

LAS states this project involved reviewing, researching and drafting Plaintiff's opposition to CDCR's second summary judgment motion. LAS billed 108.6 hours and requests \$60,734. Defendants object to numerous entries as chronologically outside the timeline for this project.

The report makes a \$8,775.50 reduction and finds **\$51,958.50** is reasonable. All twelve entries spanning a period of six months before March 12, 2015 are denied. They occurred before CDCR filed its second motion for summary judgment. (Dkt. 121.) Moreover, these entries are not for this project. Ms. Webb's entries of 4/8/2015, 4/9/2015, 4/14/2015 and 4/17/2015 are denied. Tasks there were duplicative and unnecessary, especially participating in moot court. Ms. Garcia's fees were re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 7.)

Project No. 56 – Oppose SPB'S Second MSJ

LAS states this project involved reviewing, researching and drafting Plaintiff's opposition to SPB's second summary judgment motion. LAS billed 38 hours and requests \$18,948.10. Defendants object to two entries as chronologically outside the timeline for this

1 project. SPB also objects to any work tied to Plaintiff's unsuccessful due process claim.

2 This report makes a \$3,204.50 reduction and finds **\$15,743.60** is reasonable. The
 3 two entries before March 12, 2015 are denied. They occurred before SPB filed its second
 4 motion for summary judgment. (Dkt. 125.) Additionally, these entries are not for this
 5 project. SPB's objection based on the due process claim was rejected in Section III.B
 6 above. Moreover, SPB cites no legal authority validating its method of determining the
 7 recoverable percentage. SPB requests a 50% reduction based on 13 out of 21 pages of
 8 argument in Plaintiff's opposition. This may be an unreliable correlation to hours actually
 9 expended by LAS.

10 **Project No. 57 – Plaintiff's MSJ Against CDCR**

11 LAS states this project involved researching, compiling evidence, drafting the
 12 opening and reply briefs regarding Plaintiff's motion for summary judgment against CDCR.
 13 As corrected via an errata at Dkt. 316-2, LAS billed 197.4 hours and requests \$111,923.50.
 14 Defendants lodged no objections.

15 The report makes a \$2,715.10 reduction and finds **\$109,208.40** is reasonable. Mr.
 16 Ho's entry of 4/1/2015 is denied as not for this project. Mr. Ho's entry of 4/14/2015 is
 17 denied as duplicative and unnecessary. He attended the hearing, but Ms. Chien did the oral
 18 arguments. Ms. Garcia's and Ms. Ponce's fees were re-calculated at the \$150 rate found in
 19 Section II.C above. (Mini-Charts 7, Ms. Ponce's fees were mistakenly listed in Project 58.)

20 **Project No. 58 – Plaintiff's MSJ Against SPB**

21 LAS states this project involved researching, compiling evidence, drafting the
 22 opening and reply briefing on Plaintiff's motion for summary judgment against SPB. LAS
 23 billed 56.9 hours and requests \$24,363.20. Except raising a minor discrepancy of 1.4 hours
 24 (corrected here), CDCR lodged no other objections. SPB objects to any work tied to
 25 Plaintiff's unsuccessful due process claim.

26 The report makes a \$875.40 reduction and finds **\$23,487.80** is reasonable. Ms.

Ponce's entry of 9/1/2014 and Ms. Chien's entry of 4/1/2015 are denied. They are not for this project. SPB's objection based on the due process claim was rejected in Section III.B above.

Project No. 59 – Analyze and Develop Strategy Re Court's Order Re Cross-Motions for Summary Judgment

LAS states this project involved reviewing and analyzing the Court's omnibus order regarding the parties' cross-motions for summary judgment. LAS billed 0.5 hour and requests \$377. Defendants lodged no objections.

This report finds the requested **\$377** is reasonable.

Project No. 60 – Plaintiff's Pretrial Disclosures

LAS states this project involved reviewing FRCP requirements; assembling and drafting matters for pretrial disclosures; researching and drafting objections to Defendants' pretrial disclosures; responding to Defendant's objections of Plaintiff's pretrial disclosures; reviewing Defendants' replies to objections; and filing amended disclosures. LAS billed 21.2 hours and requests \$10,892.80. Defendants lodged no objections.

This report makes a \$43.50 reduction and finds **\$10,849.30** is reasonable. The reduction is for 2.9 paralegal hours re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 7.)

Project No. 61 – Analyze Defendants' Pretrial Disclosures

LAS did not provide a summary description of this project. It billed 1.5 hours and requests \$812.30. Defendants lodged no objections.

This report finds the requested **\$812.30** is reasonable.

Project No. 62 – Joint Statement Regarding Jury Trial

LAS states this project involved researching and preparing submissions on the necessity for jury trial, meeting and conferring with Defendants regarding the same, reviewing Defendants' submissions and participating in the hearing. LAS billed 3.0 hours

1 and requests \$2,224.30. Defendants lodged no objections.

2 The report makes a \$226.20 reduction and finds **\$1,998.10** is reasonable. Mr. Ho's
3 entry of 5/8/2015 is denied. The tasks do not appear to be for this project.

4 **Project No. 63 – Response Per Court's Order Regarding MSJ Factual Issues**

5 LAS states this project involved providing supplemental submissions as ordered by
6 the Court regarding the parties' cross-motions for summary judgment. LAS billed 1.5 hours
7 and requests \$853.80 in its billing records, despite Mr. Ho's supplemental declaration
8 seeking 8.2 hours and \$5,351.20. (Dkt. 315-1, pg. 70; Dkt. 316-2, pg. 14.) Defendants
9 objected to this discrepancy.

10 This report finds the requested **\$853.80** is reasonable.

11 **Project No. 64 – Court Requested Supplemental Briefing Regarding Preclusion**

12 LAS states this project involved responding to the Court's request for briefing on the
13 adequacy of state administrative procedures. LAS billed 14 hours and requests \$5,447.60.
14 SPB objects to all fees for this entire project, arguing it was devoted exclusively to
15 Plaintiff's failed procedural due process claim.

16 This report finds the requested **\$5,447.60** is reasonable. SPB's objection based on
17 the due process claim was rejected in Section III.B above. Moreover, while it is tempting to
18 deny all fees for this project, this report will not do so at the risk of double counting any
19 reduction of awardable fees vis-à-vis the extent of Plaintiff's overall success in this action.
20 Focus on the overall results achieved is addressed below in Section IV.B.

21 **Project No. 65 – Trial Stipulations**

22 LAS states this project involved meeting and conferring with Defendants concerning
23 potential trial stipulations. LAS billed 3.8 hours and requests \$2,667.20. CDCR objects to
24 one entry as unrelated to this project.

25 The report makes a \$2,488.20 reduction and finds **\$179** is reasonable. Mr. McNeill's
26 entry of 4/6/2015 is denied as not for this project.

Project No. 66 – Not Used

Project No. 67 – CDCR Motion to Quash Beard Subpoena

LAS states this project involved the determination of witnesses to be subpoenaed; meeting and conferring with CDCR regarding the trial subpoena to Defendant Jeffrey Beard; researching and drafting submissions regarding this dispute. As corrected via an errata at Dkt. 316-2, LAS billed 3.7 hours and requests \$2,059. Defendants lodged no objections.

This report makes a \$48 reduction and finds **\$2,011** is reasonable. Ms. Alvarez's 0.8 hour is re-calculated at the \$325 rate found in Section II.C above. (Mini-Charts 8.)

Project No. 68 – Pre-Trial Findings of Fact and Conclusions of Law

LAS states this project involved drafting and filing Plaintiff's proposed findings of fact and conclusions of law and reviewing Defendants' submissions regarding the same. LAS billed 21.6 hours and requests \$12,007.70. Defendants lodged no objections.

This report finds the requested **\$12,007.70** is reasonable.

Project No. 69 – Motions in Limine

LAS states this project involved determining matters for exclusion at trial; meeting and conferring with Defendants regarding same; researching and drafting motions in limine; and participating in the hearing. LAS billed 101.0 hours and requests \$58,757.30. Defendants lodged no objections.

The report makes a \$2,298 reduction and finds **\$56,459.30** is reasonable. Ms. Alvarez's 38.3 hours are re-calculated at the \$325 rate found in Section II.C above. (Mini-Charts 8.)

Project No. 70 – Pretrial Conference Filings and Conference

LAS states this project involved preparing for and participating in the pretrial conference, including work on related court filings. LAS billed 58.4 hours and requests \$30,852.90. Defendants lodged no objections.

The report makes a \$782.30 reduction and finds **\$30,070.60** is reasonable. Mr.

McNeill's 12/30/2014 entry is disallowed. The task occurred too far in advance. Ms. Ponce's 4/3/2015 entry and Mr. McNeill's 4/14/2015 entry are denied. They do not appear to be for this project. Mr. Ho's 4/21/2015 entry is denied due to vagueness on discussions without identifying with whom.

Project No. 71 – Plaintiff's Trial Brief

LAS states this project involved researching and drafting the trial brief. LAS billed 16.0 hours and seeks \$11,392.70. Defendants lodged no objections.

The report finds the requested **\$11,392.70** is reasonable.

Project No. 72 – Prepare Cross-Examinations, Including Deposition Designations

LAS states this project involved preparing for cross-examinations of Defendants' witnesses and experts. LAS billed 119.8 hours and requests \$60,747.70. Defendants lodged no objections.

The report makes a \$1,732.70 reduction and finds **\$59,015** is reasonable. Mr. Ho's entries on 6/22/2015 and 6/29/2015 are not for this project. They occurred after the end of the bench trial. Per Section II.C above, Ms. Alvarez's 2.8 hours were re-calculated at the \$325 rate, and 26.4 paralegal hours re-calculated at the \$150 rate. (Mini-Charts 9.)

Project No. 73 – Prepare Direct Examinations

LAS states this project involved preparing for direct examinations of Plaintiff, Plaintiff's experts and Plaintiff's other witnesses. LAS billed 171.7 hours and requests \$82,616.70. Except raising a minor discrepancy of 0.2 hour (corrected here), Defendants lodged no other objections.

This report makes a \$7,536.20 reduction and finds **\$75,080.50** is reasonable. Mr. McNeill's entry of 4/12/2015 is denied as too vague. Mr. Ho's entries of 5/1/2015 and 5/5/2015 are disallowed as not for this project. Mr. McNeill's entry of 5/13/2015 is denied as not for this project. Ms. Chien's entries of 5/15/2015 and 5/31/2015 (for 0.9 hour) are denied. They were not for this project. Ms. Chien's entry of 6/2/2015 (for 2.9 hours) is

disallowed as unnecessary and duplicative. Only Mr. Ho was needed to meet with Plaintiff to prepare for trial testimony. (Dkt. 315-1 pg. 85, 91.) Ms. Ponce's entries of 6/11/2015 are disallowed as not for this project.

Ms. Garcia's fees were re-calculated at the \$150 rate found in Section II.C above. Ms. Ponce's fees were not re-calculated using the \$150 rate, because the average implicit hourly rate LAS used for her in this project is at or below \$150. (Mini-Charts 9.)

Project No. 74 – Prepare and Select Trial Exhibits

LAS states this project involved deciding upon and preparing exhibits for use at trial. LAS billed 148.7 hours and requests \$29,799.30. Except raising a minor discrepancy of 0.2 hour (corrected here), Defendants lodged no other objections.

The report makes a \$7,091.30 reduction and finds **\$22,708** is reasonable. Mr. Ho's entry of 1/7/2015 is denied as not for this project. The following entries for Ms. Ponce are denied, because the work appears clerical and not legal in nature: 5/14/2015, 5/15/2015, 5/18/2015, 6/4/2015 (for 0.9 hour and 4.4 hours), 6/5/2015 (for 4.2 hours), 6/8/2015 (for 6.7 hours) and 6/9/2015. The remaining hours for Ms. Ponce were re-calculated using the \$150 rate found in Section II.C above. Ms. Garica's fees were also re-calculated using the same \$150 rate. (Mini-Charts 9.)

Project No. 75 – Trial Graphics

LAS states the project involved discussing and creating demonstratives for use at trial. LAS billed 18.3 hours and requests \$6,066.50. Defendants lodged no objections.

The report makes a \$84 reduction and finds **\$5,982.50** is reasonable. Ms. Ponce's fees were re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 9.)

Project No. 76 – Trial Witness Preparations

LAS states this project involved preparing Plaintiff, Plaintiff's experts and Plaintiff's other witnesses for trial testimony. LAS billed 52.9 hours and requests \$28,647.60. Defendant lodged no objections.

1 The report makes a \$1,412.90 reduction and finds **\$27,234.70** is reasonable. Mr.
 2 McNeill's entry of 5/14/2015 and Ms. Ponce's entry of 6/12/2015 are denied as not for this
 3 project. Ms. Chien's entry of 6/2/2015 is disallowed as unnecessary and duplicative. Only
 4 Mr. Ho was needed to meet with Plaintiff to prepare for trial testimony. (Dkt. 315-1 pg. 85,
 5 91.) Ms. Ponce's fees were not re-calculated using the \$150 rate, because the average
 6 implicit hourly rate LAS used for her in this project is below \$150. (Mini-Charts 9.)

7 **Project No. 77 – Prepare for and Attend Trial Day 1**

8 LAS states this project involved preparations for and attendance at the first day of
 9 trial. LAS billed 16.7 hours and requests \$6,863.90. Defendants lodged no objections.

10 The report makes a \$48 reduction and finds **\$6,815.90** is reasonable. Ms. Ponce's
 11 fees were re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 10.)

12 **Project No. 78 – Prepare for and Attend Trial Day 2**

13 LAS states this project involved preparations for and attendance at the second day of
 14 trial. LAS billed 63.9 hours and requested \$15,624.60. Defendants lodged no objections.

15 This report makes a \$763.50 reduction and finds **\$14,861.10** is reasonable. All
 16 paralegal hours were re-calculated at the \$150 rate found in Section II.C above. (Mini-
 17 Charts 10.)

18 **Project No. 79 – Prepare for and Attend Trial Day 3**

19 LAS states this project involved preparations for and attendance at the third day of
 20 trial. LAS billed 58.9 hours and requests \$20,175.90. Defendants lodged no objections.

21 This reports makes a \$447 reduction and finds **\$19,728.90** is reasonable. All
 22 paralegal hours were re-calculated at the \$150 rate found in Section II.C above. (Mini-
 23 Charts 10.)

24 **Project No. 80 – Prepare for and Attend Trial Day 4**

25 LAS states this project involved preparations for and attendance at the fourth day of
 26 trial. LAS billed 52.8 hours and requests \$18,368.20. Defendants lodged no objections.

This reports makes a \$417 reduction and finds **\$17,951.20** is reasonable. All paralegal hours were re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 10.)

Project No. 81 – Prepare for and Attend Trial Day 5

LAS states this project involved preparations for and attendance at the fifth day of trial. LAS billed 52.0 hours and requests \$19,661.10. Defendants lodged no objections.

This reports makes a \$343.50 reduction and finds **\$19,317.60** is reasonable. All paralegal hours were re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 10.)

Project No. 82 – Prepare for and Attend Trial Day 6

LAS states this project involved preparations for and attendance at the sixth day of trial. LAS billed 25.2 hours and requests \$9,462.20. Defendants lodged no objections.

This reports makes a \$187.50 reduction and finds **\$9,274.70** is reasonable. All paralegal hours were re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 10.)

Project No. 83 – Post-Trial Findings of Fact and Conclusions of Law

LAS states this project involved preparing post-trial findings of fact and conclusions of law; and reviewing and responding to Defendants' submissions regarding same. LAS billed 130.8 hours and requests \$85,119.60. Defendants lodged no objections.

This report finds the requested **\$85,119.60** is reasonable.

Project No. 84 – Post-Trial Exhibit Issues

LAS states this project involved meeting and conferring regarding redaction of trial exhibits with personally identifying information, conducting such redactions and submission to the Court regarding same. LAS billed 39.3 hours and requests \$13,296.60. Defendants lodged no objections.

The report makes a \$188.50 reduction and finds **\$13,108.10** is reasonable. Mr. Ho's

entry of 6/22/2015 is disallowed due to vagueness on discussions without identifying with whom. Paralegal fees were not re-calculated using the \$150 reasonable rate, because the average implicit hourly rates LAS used for Ms. Ponce and Ms. Garcia in this project are below \$150. (Dkt. 315-1, pg. 103-04; Mini-Charts 11.)

Project No. 85 – Post-Trial Hearing Regarding Remedies

LAS states this project involved reviewing the Court’s Findings of Fact and Conclusions of Law; researching and preparing submissions regarding remedies sought; reviewing Defendants’ responses to same; and participating at the hearing. LAS billed 69 hours and seeks \$51,440. SPB objects, arguing all work on Plaintiff’s unsuccessful bid for systemic injunctive relief should be denied. It requests a 75% reduction to all fees sought for this project, as well as the denial of two entries expressly mentioning systemic injunctive relief.

The report makes a \$458.50 reduction and finds **\$50,981.50** is reasonable. Ms. Webb’s entry of 8/26/2015 is denied as unnecessary. Her work appears duplicative of Mr. McNeill’s role here. While it is tempting to reduce fees here in light of Plaintiff not securing systemic injunctive relief, this report will not do so at the risk of double counting any reduction of awardable fees vis-à-vis the extent of Plaintiff’s overall success in this action. Focus on the overall results achieved is addressed below in Section IV.B. Significantly, all work here was related to Plaintiff’s successful Title VII claim against both CDCR and SPB.

Project No. 86 – Second Settlement Conference

LAS states this project involved preparing for and participating in the second settlement conference. LAS billed 30 hours and requests \$20,925.20. Defendants lodged no objections.

The report finds the requested **\$20,925.20** is reasonable.

Project No. 87 – Cost Bill and Motion for Attorney’s Fees and Costs

1 The project is addressed in Section VI below.

2 **Project No. 88 – Trial Team Meetings**

3 LAS states this project involved internal discussions to identify, allocate and
4 coordinate pretrial and trial preparation tasks. LAS billed 39.3 hours and requests
5 \$21,195.70. Defendants object to all fees for this entire project. They argue this “catch-all”
6 project covering December 11, 2014 to June 15, 2015: (1) violates the November 23 Order
7 requiring specific and discrete projects (not generalized statements like “trial preparations”),
8 (2) contains vague entries like “trial team meeting” or “weekly meeting” that do not allow
9 for meaningful evaluation of claimed time and (3) contains entries that should have been
10 listed under the specific project to which they addressed. This report agrees.

11 This report finds no reasonable fees should be awarded. Admittedly, this was a
12 tough call. Generally, in the hectic run-up toward a looming trial date, it is reasonable to
13 have weekly, all-hands trial prep meetings. Operationally, this helps trial teams on critical
14 decision-making, staying organized, communicating assignments and issues to all team
15 members when the situation may be a moving target and holding team members
16 accountable, if each member presents at the all-hands meeting the status of her respective
17 tasks.

18 Here, however, numerous problems with LAS’s billing entries warrant the denial of
19 all fees. In violation of the November 23 Order, this project serves as an all-purpose catch
20 all for eleven entries which should have been listed elsewhere under specific projects. For
21 example, see entries of 12/11/2014, 3/24/2015, 3/27/2015, 4/21/2015, 5/1/2015, 5/5/2015,
22 5/13/2015. For the remaining entries expressly mentioning weekly trial team meetings, they
23 appear unreliable. First, oddly, Ms. Chien has only two entries (5/11/2015 and 5/18/2015)
24 for weekly trial team meetings, even though she was one of two Plaintiff’s attorneys with a
25 speaking role at trial. Second, for several entries, only one timekeeper billed time for that
26 weekly trial team meeting. For example, see entries of 3/17/2015, 4/6/2015, 4/13/2015,

5/26/2015. Third, for other entries where multiple timekeepers billed time to the same meeting, the amounts of time billed do not match. For example, see entries of 3/23/2015, 5/4/2015, 5/11/2015, 5/18/2015, 6/1/2015, 6/8/2015.

Project No. 89 – Comparators Issues

LAS states this project involved reviewing files of other CDCR applicants excluded because of Question 75, making comparisons between same, creating summaries and reviewing CDCR’s summaries. LAS billed 9.5 hours and requests \$5,983. Defendants lodged no objections.

The report makes a \$386.50 reduction and finds **\$5,596.50** is reasonable. Mr. Ho’s entry of 4/5/2015 is disallowed due to vagueness on discussions without identifying with whom. Ms. Alvarez’s 3.3 hours were re-calculated at the \$325 rate in Section II.B above. (Mini-Charts 11.)

Project No. 90 – Client Communications and Meetings

LAS states this project involved meetings and other discussions with Mr. Guerrero, including regarding case status, discovery, settlement discussions and preparation for deposition and trial. LAS billed 15.8 hours and requests \$7,606.90. Defendants object to all fees for this entire project. They argue this “catch-all” project spanning from March 28, 2013 to December 5, 2014: (1) violates the November 23 Order requiring specific and discrete projects (not generalized statements), (2) contains vague entries and (3) contains entries that should have been listed under the specific project(s) to which the attorney-client communications addressed. This report agrees.

This report finds no reasonable fees should be awarded.

Project No. 91 – CDCR Withhold Issues

LAS states this project involved work associated with CDCR’s withhold of Plaintiff’s job application and appeal of same to SPB. LAS billed 16 hours and requests \$4,331.80. SPB objects to all fees for this entire project. Citing *Manders v. State of Okl. ex*

1 *rel. Dep't of Mental Health*, 875 F.2d 263 (10th Cir. 1989), SPB argues all work on
 2 Plaintiff's administrative appeal to SPB is unrecoverable, as SPB's appeals procedure is not
 3 a precondition to maintaining Plaintiff's Title VII claim, nor is it part of Title VII's
 4 enforcement scheme.

5 This report finds the requested **\$4,331.80** is reasonable. Assuming *arguendo* that the
 6 characterization of SPB appeals is true, *Manders* remains distinguishable. There, plaintiff
 7 state employees sued their supervisor, employer and state officials, alleging sexual
 8 harassment by the supervisor. 875 F.2d at 264. The plaintiffs also requested attorney's fees
 9 under Title VII for legal services performed during the employer's internal grievance
 10 process where the plaintiffs unsuccessfully sought to have the supervisor terminated. *Id.* at
 11 264, 266. The Tenth Circuit affirmed the denial of attorney's fees, holding the plaintiffs are
 12 not entitled to such fees for services performed at an optional grievance process. The Tenth
 13 Circuit reasoned the plaintiffs did not have to undergo the internal grievance process before
 14 pursuing the mandated administrative procedures that complainants must resort to before
 15 filing a Title VII lawsuit in federal district court. *Id.* at 266-67.

16 Here, whether optional or not, the administrative appeals to SPB were not only a
 17 mechanism to seek relief from CDCR's double rejection of Mr. Guerrero's job candidacy.
 18 In this litigation, the SPB appeals were a crucial part of the actual merits and controversy.
 19 (Third Amended Complaint ¶¶ 33-53, 57, 62-79 "TAC".) Indeed, the Court found SPB
 20 liable for violating Title VII due to its inadequate handling and assessment of Mr.
 21 Guerrero's appeal. (FFCL 22.) Thus, it is reasonable for Plaintiff to recover fees for his
 22 counsel's assistance on his second appeal to SPB. *See Thornberry v. Delta Air Lines, Inc.*,
 23 676 F.2d 1240, 1244 (9th Cir. 1982) (affirming the district court's award of fees for "time
 24 the plaintiffs' attorneys spent in administrative proceedings which were relevant and
 25 beneficial in preparing the Title VII claim," because counsel's representation was "critical to
 26 the success of their subsequent court proceedings").

Project No. 92 – ADR Issues

LAS states this project involved court-mandated ADR selection and conferences with Plaintiff regarding same. LAS explained this is other than the court-supervised mediations. LAS billed 4 hours and requested \$1,550.80. Defendants lodged no objections.

This report finds the requested **\$1,550.80** is reasonable.

Project No. 93 – Case Analysis

LAS states this project involved discussions concerning general case issues, including legal theories, discovery needs, litigation strategy and trial strategy. LAS billed 18.8 hours and requests \$9,684.10. Defendants object to all fees for this entire project. They argue this “catch-all” project covering July 11, 2014 to July 14, 2015: (1) violates the November 23 Order requiring specific and discrete projects (not generalized statements), (2) contains vague and ambiguous entries and (3) contains entries spanning numerous other projects. This report agrees.

This report finds no reasonable fees should be awarded.

Project No. 94 – Case and Trial Management Issues, Including Meet and Confers with Opposing Counsel

LAS states this project involved the identification and discussion of litigation and trial management issues, including discussions with Defendants’ counsel. As corrected via an errata at Dkt. 316-2, LAS states it billed 52.7 hours and requests \$26,834.30. Defendants object to all fees for this entire project. They argue this “catch-all” project covering July 16, 2014 to May 5, 2015: (1) violates the November 23 Order requiring specific and discrete projects (not generalized statements), (2) contains vague and ambiguous entries and (3) contains entries spanning numerous other projects. This report agrees.

This report finds no reasonable fees should be awarded.

Project No. 95 – Trial Subpoenas.

LAS states this project involved drafting and overseeing the service of trial

subpoenas to witnesses, including researching requirements and drafting and tracking return of on-call witness letters. As corrected via an errata at Dkt. 316-2, LAS billed 42.8 hours and requests \$10,119.90. (Dkt. 315-1, pg. 71, 121-23.) Defendants lodged no objections.

The report makes a \$3,717.88 reduction and finds **\$6,402.02** is reasonable. Ms. Webb's 2/4/2015 entry is disallowed. The task occurred too far in advance. Mr. Ho's entry of 4/2/2015 is denied. His tasks were not specific to trial subpoenas, but for general trial preparations. Ms. Garcia and Ms. Ponce engaged in two rounds of preparing trial subpoenas: 14.6 hours for the first and 17.3 hours for the second (presumably due to the Court's re-setting of the May 11, 2015 trial date less than three weeks from trial). Nonetheless, this seems excessive and was reduced by 15 hours, with 7.5 hours deducted from each paralegal's hours. Ms. Garcia's reduced hours were then re-calculated at the \$150 rate found in Section II.C above. (Mini-Charts 12.) Mr. Ponce's reduced hours, however, were not re-calculated at the \$150 rate. The average implicit hourly rate LAS used for her in this project is below \$150. (Dkt. 315-1, pg. 71, 122-23; Mini-Charts 12.)

D. Lodestar of Recoverable Fees

Adding up all the findings on reasonable fees for each recoverable project above (excluding Project No. 87 for fees on fees), this report finds that the lodestar is **\$1,395,656.12**.

IV DOWNWARD ADJUSTMENT OF LODESTAR

The parties dispute whether the lodestar should be Plaintiff's fee award or whether the lodestar should be further reduced due to Plaintiff's partial success in this action. With SPB joining CDCR's contentions, Defendants argue the lodestar should be reduced by fifty percent (50%) because: (1) Plaintiff succeeded on only one out of ten claims pled at the outset of this action; and (2) after prevailing on the sole Title VII claim, Plaintiff only obtained limited relief. (CDCR Opp. 9-10, 12-13; SPB Opp. 4 n.1, 10-11.) Meanwhile, Plaintiff contends his attorneys won this case unequivocally and got excellent results,

1 justifying all claimed fees and no reduction of the presumptively reasonable lodestar. (Mot.
2 24.)

3 In *Hensley*, the Supreme Court set out a two-step analysis for any lodestar deduction
4 due to partial success, stating the factor of partial success “is particularly crucial where a
5 plaintiff is deemed ‘prevailing’ even though he succeeded only on some of his claims for
6 relief.” 461 U.S. at 434. In this situation, two questions must be addressed:

7 First, did the plaintiff fail to prevail on claims that were unrelated to the
8 claims on which he succeeded? Second, did the plaintiff achieve a level of
9 success that makes the hours reasonably expended a satisfactory basis for
10 making a fee award?

11 *Id.* at 434. The report examines both questions in turn.

12 **A. Relatedness of Successful and Unsuccessful Claims**

13 Where a plaintiff is partially successful in a lawsuit, he may not recover attorney’s
14 fees for work on unsuccessful claims that are “unrelated” to his successful ones—such work
15 “cannot be deemed to have been ‘expended in pursuit of the ultimate result achieved.’”
16 *Hensley*, 461 U.S. at 435. *Hensley* observed “there is no certain method of determining
17 when claims are ‘related’ or ‘unrelated’” but it also indicated that claims are related if they
18 either “involve a common core of facts” or are “based on related legal theories.” *Id.* at 435,
19 437 n.12. The Ninth Circuit, having acknowledged that the *Hensley* test for relatedness “is
20 not precise,” *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 903 (9th Cir. 1995)
21 (quoting *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141 (9th Cir. 1986)), has articulated
22 the relevant inquiry as “whether relief sought on the unsuccessful claim is intended to
23 remedy a course of conduct entirely distinct and separate from the course of conduct that
24 gave rise to the injury on which the relief is granted.” *Thorne*, 802 F.2d at 1141 (internal
25 quotation marks omitted); *see also Schwarz*, 73 F.3d at 903. The Ninth Circuit states a
26 district court must ask “whether the unsuccessful and successful claims arose out of the
same ‘course of conduct.’ If they didn’t[,] they are unrelated under *Hensley*.” *Schwarz*, 73

1 F.3d at 903.

2 Here, for the reasons stated in Section III.B above, Plaintiff's unsuccessful and
3 successful claims are related. Thus, this report moves onto the second step of the *Hensley*
4 analysis.

5 **B. Overall Results Achieved**

6 On step two of *Hensley*, this report must consider whether Plaintiff "achieve[d] a
7 level of success that makes the hours reasonably expended a satisfactory basis for making a
8 fee award." 461 U.S. at 434. In answering this question, *Hensley* states the district court
9 "should focus on the significance of the overall relief obtained by the plaintiff in relation to
10 the hours reasonably expended on the litigation." *Id.* at 435. "Where a plaintiff has
11 obtained excellent results, his attorney should recover a fully compensatory fee." *Id.* at 435.
12 In the face of excellent results, "the fee award should not be reduced simply because the
13 plaintiff failed to prevail on every contention raised in the lawsuit." *Id.* at 435. A plaintiff
14 may obtain excellent results without receiving all the relief requested. "For example, a
15 plaintiff who failed to recover damages but obtained injunctive relief, or vice versa, may
16 recover a fee award based on all hours reasonably expended if the relief obtained justified
17 that expenditure of attorney time." *Id.* at 435.

18 "If, on the other hand, a plaintiff has achieved only partial or limited success, the
19 product of hours reasonably expended on the litigation as a whole times a reasonable hourly
20 rate may be an excessive amount." *Id.* at 436. "We emphasize that the inquiry does not end
21 with a finding that the plaintiff obtained significant relief. A reduced fee award is
22 appropriate if the relief, however significant, is limited in comparison to the scope of the
23 litigation as a whole." *Hensley*, 461 U.S. at 439-40. The Ninth Circuit has explained that
24 the "bulk of discretion retained by the district court lies" at step two of the *Hensley* inquiry,
25 which, at its core, asks whether a plaintiff's accomplishments warrant the fee amount
26 requested. *See Thomas v. City of Tacoma*, 410 F.3d 644, 650 (9th Cir. 2005).

1 This report finds that Plaintiff's lawsuit achieved good—but not excellent—overall
 2 results when viewed in relation to the 3,000+ hours claimed by LAS. Undisputedly, the
 3 ambitious institutional reforms that Plaintiff and his counsel sought for Defendants' state-
 4 wide organizations were rejected by the Court. Plaintiff requested broad systemic injunctive
 5 relief requiring Defendants to "institute written policies, procedures, practices, training, and
 6 all other steps necessary to ensure that CDCR's background investigation and selection
 7 processes for the Correctional Officer position, and SPB's handling of appeals from CDCR
 8 decisions to withhold applicants, are consistent" with Title VII case law and EEOC
 9 guidance. (Dkt. 268, Plaintiff's Brief Summarizing Relief Requested 12.) Specifically,
 10 Plaintiff asked for the following:

11 (1) that CDCR retain experts to review its hiring process to ensure that it is
 12 properly validated; (2) modifications to CDCR's "Discrepancy Notice"
 13 form; (3) training for CDCR and SPB staff on the EEOC guidance; (4)
 14 consideration of the alternative background investigation testing devices
 15 plaintiff presented during trial; (5) that CDCR and SPB report to the Court
 for five years, on a quarterly basis, the number of applicants rejected based
 on use of an invalid SSN; and (6) that the Court retain jurisdiction of this
 case for the purposes of monitoring and ensuring compliance in
 perpetuity.

16 (Order re Relief 6-7.) Instead, what Plaintiff and his counsel achieved was good individual
 17 relief tailored to CDCR's and SPB's unlawful discrimination toward him: (1) reinstatement
 18 to where Plaintiff had progressed in the CDCR hiring process (2) rescission of the three
 19 adverse CDCR and SPB decisions and (3) \$140,362 in backpay, with CDCR and SPB
 20 jointly and severally liable if Plaintiff completes the CDCR training academy. (Order re
 21 Relief 2-4, 6.) Again, Plaintiff and LAS obtained no systemic change other than requiring
 22 Defendants to follow the law. In this regard, Plaintiff's lawsuit is distinguishable from
 23 *Soren v. Mink*, 239 F.3d 1140, 1147 (9th Cir. 2001), which Plaintiff quotes to emphasize that
 24 excellent results may be obtained without receiving all relief requested.⁴ (Mot. 25.) In
 25

26 ⁴ Plaintiff's reliance on two other decisions for "excellent results" absent all requested relief
 is misplaced. Plaintiff's quote from *Dang v. Cross*, 422 F.3d 800 (9th Cir. 2005) is dicta.

1 *Soren*, after the parties settled the class action, the district court awarded \$989,431.08 in fees
 2 from the plaintiffs' request of \$1,446,908 for 8,298.39 hours of work by lawyers and legal
 3 staff. 239 F.3d at 1143-44. In light of the "excellent results," the Ninth Circuit affirmed the
 4 district court's refusal to deduct the award for partial success. The district court found that
 5 the plaintiffs had continuously litigated for eight years and accomplished their "mission" to
 6 "bring about a common good"—namely the "improvement of the disability determination
 7 system in Oregon." *Id.* at 1147. The *Soren* plaintiffs obtained systemic relief against a
 8 federal agency and three state agencies, but not all the relief they sought or all the program
 9 changes they contemplated. *Id.* at 1143, 1147.

10 Similarly, Plaintiff's lawsuit is unlike another, more recent decision on "excellent
 11 results" achieved despite partial success. In *Dowd v. City of Los Angeles*, 28 F.Supp.3d
 12 1019 (C.D. Cal. 2014), the plaintiffs sued Los Angeles via 42 U.S.C. § 1983, challenging as
 13 unconstitutional under the First and Fourteenth Amendments two municipal ordinances that
 14 regulated vending and expressive activities on the Venice Beach Boardwalk. 28 F.Supp.3d
 15 at 1030-31. After a seven-day trial, the jury found for the plaintiffs, awarding nominal
 16 damages totaling \$10 despite their request for hundreds of thousands of dollars. *Id.* at 1029,

17
 18 *Dang* did not decide whether the 10% partial-success reduction was reasonable in light of
 19 the plaintiff's success. Instead, the Ninth Circuit reversed because the district court erred as
 20 a matter of law. Latter failed to consider whether the unsuccessful claims against the
 21 dismissed defendants and the losing defendant were related to the successful claim. *Id.* at
 22 813. While better, Plaintiff's reliance on *Hamlin v. Charter Township of Flint*, 165 F.3d
 23 426, 438 (6th Cir. 1999), is not persuasive. The Sixth Circuit reversed and reinstated the fee
 24 award without the district court's 50% partial-success reduction. *Id.* at 438. *Hamlin* held
 25 that the plaintiff's recovery of half of damages sought was "not a proper basis" for reducing
 26 the fee award. *Id.* at 438. The Sixth Circuit held: "[t]he law does not require plaintiffs to
 recover 100% of what they sue for in order to be considered successful at trial." *Id.* at 438.
 Significantly, the *Hamlin* plaintiff recovered \$500,000 out of over \$1M sought vis-à-vis his
 total fee request of \$105,645 for about 603.68 hours at \$175 per hour. *Id.* at 436, 438. Here,
 the comparison between Plaintiff's overall success and his \$1.6M fee request for 3,000+
 hours is less favorable. See *Hensley*, 461 U.S. 424, 435 (stating the district court "should
 focus on the significance of the overall relief obtained by the plaintiff in relation to the hours
 reasonably expended on the litigation")

1 1034. The trial court found the plaintiffs were entitled to attorney's fees and awarded
 2 \$601,902.50 from the plaintiffs' request for \$995,042.32. *Id.* at 1033, 1060. Despite
 3 succeeding on two out of five related claims, the trial court refused to reduce the lodestar for
 4 limited success. *Id.* at 1060-62. It found the plaintiffs had achieved "excellent results"
 5 because they "effected a meaningful change in policy to the extent the Court declared the
 6 amplified sound ban unconstitutional. . . . Going forward, Plaintiffs, similarly situated street
 7 performers and the public at large will reap the benefits of Plaintiffs' victory." *Id.* at 1063.
 8 Next, the trial court found that the plaintiffs' successful as-applied challenge achieved an
 9 important public purpose vis-à-vis the Rules on Decorum on how the City Council manages
 10 public comments at its meetings. "As a result of this litigation, the City will likely
 11 reevaluate how it conducts City Council meetings, in turn making it less likely that
 12 individuals partaking in public comment sessions will be wrongfully removed and
 13 suspended from meetings for engaging in protected political speech." *Id.* at 1063.

14 Here, the individual relief that Plaintiff obtained is dissimilar in form and impact
 15 from the systemic relief achieved in *Soren* and the meaningful public policy change secured
 16 in *Dowd*, both of which were found to be "excellent results" that concretely benefited the
 17 general public. Plaintiff obtained good individual relief, but did not secure broad systemic
 18 injunctive relief. And, according to Defendants, "Plaintiff failed to achieve the principle
 19 goal underlying his case: to prove that a government agency cannot consider SSN misuse by
 20 formerly undocumented immigrants as a negative factor in hiring." (CDCR Opp. 12; *see*
 21 *also* TAC Prayer for Relief ¶¶ 2-3, 6.) The Court found that CDCR's Question 75 serves a
 22 legitimate purpose, because "[p]rior use of an invalid SSN by itself is rationally probative"
 23 to the job-related "important character traits" of "honesty, integrity, and good judgment."
 24 (FFCL 23.)

25 Due to the good, but mixed overall results, and in light of the 3,000+ hours LAS
 26 claimed, this report recommends an **across-the-board reduction of fifteen percent (15%)**

1 to Plaintiff's lodestar. Where, as here, a plaintiff has achieved partial success, *Hensley*
 2 permits the district court to exercise discretion in applying a reasonable downward
 3 adjustment in the lodestar by either "identifying specific hours that should be eliminated, or
 4 [by] simply reducing the award to account for the limited success." *Hensley*, 461 U.S. at
 5 436-37.

6 Reaching a fair and appropriate percentage for the lodestar reduction here was tricky.
 7 This report believes 15% is reasonable, despite the undersigned not finding case law directly
 8 on point with our situation: single plaintiff prevailed against all defendants on his core Title
 9 VII disparate impact claim with related unsuccessful claims, securing good individual
 10 equitable relief, but not any broad injunction requiring systemic reforms of the two
 11 institutional defendants. In the case law, district courts confronted with a defendant's
 12 request for a partial-success reduction have used a mix of considerations primarily revolving
 13 around the number of defendants, claims and relief initially sued upon versus the win-loss
 14 tally on the defendants, claims and relief remaining when the plaintiff ultimately prevailed.

15 Two decisions helped calibrate the 15% reduction here. In *Farina v. Ciccone Food*
 16 *Products, Inc.*, 2005 U.S. Dist. LEXIS 34098 (N.D. Ill. Dec. 15, 2005), the plaintiffs won
 17 their Title VII claim on hostile work environment but lost their gender discrimination claim
 18 after a jury trial. *Id.* at *1-2. The plaintiffs received monetary awards of \$35,000 out of
 19 millions of dollars sought. *Id.* at *14. After declining to grant an injunction requiring
 20 company-wide reforms, the district court reduced the \$256,185 lodestar by 34.3% for partial
 21 success under *Hensley*. *Id.* at *3-5, 11, 14. Similarly, in *Jackie Robinson v. City of New*
 22 *York*, 2009 U.S. Dist. LEXIS 89981 *30 (S.D.N.Y. Sept. 29, 2009), the defendants
 23 requested a partial-success reduction of at least 50% because the plaintiffs' success was
 24 minimal when compared to the relief sought. There, the plaintiffs sued under Title VII and
 25 42 U.S.C. §1983, alleging race discrimination and retaliation by employer police department
 26 and supervisors that caused nine plaintiff police officers to suffer from less favorable

1 evaluations and the denial of voluntary overtime, paid detail assignments, favorable posts,
2 etc. *Id.* at *2-3. After a 14-day trial, the jury awarded damages ranging from \$15,000 to
3 \$60,000 as to seven of nine plaintiffs (for total damages of \$235,000). *Id.* at *9, 30, 32. The
4 district court also granted an injunction consistent with the jury's verdict. *Id.* at *9. The
5 plaintiffs requested \$1,226,041.10 in attorney's fees. *Id.* at *5. The district court reduced
6 the lodestar by 25%. *Id.* at *34. It found that:

7 While plaintiffs' claims arise out of a common core of facts, plaintiffs
8 succeeded on only one of their many claims -- and then succeeded only in
9 part. The jury awarded plaintiffs compensatory damages in the amount of
10 \$ 235,000 for discrete events of retaliation on the part of a single superior
11 lasting less than a year -- not the several millions in compensatory and
12 punitive damages the plaintiffs sought for violations allegedly committed
13 by five named defendants and half a dozen other commanders, stretching
14 from 2003 until the date of trial.

15 *Id.* at *31-32. Here, this report landed on a 15% reduction because Plaintiff achieved better
16 overall success on his core Title VII claim than the *Farina* or *Robinson* plaintiffs, without
17 ever seeking millions of dollars in damages. *Cf. Moreno v. City of Sacramento*, 534 F.3d
18 1106, 1112 (9th Cir. 2008) ("Nevertheless, the district court can impose a small reduction,
19 no greater than 10 percent—a 'haircut'—based on its exercise of discretion and without a
20 more specific explanation."). Moreover, Plaintiff got make-whole equitable relief (but not
21 broad systemic reforms) for the core Title VII disparate impact claim that his counsel LAS
22 spent much time and energy to advance with voluminous fact discovery and six experts
23 testifying at trial.

24 This report rejects Defendants' request for a 50% reduction of the lodestar. Fifty
25 percent is too steep. In urging for the 50% reduction, Defendants rely on two decisions.
26 Both are distinguishable. In *Harris v. County of San Bernardino*, 24 F.3d 16, 17 (9th Cir.
1994), the plaintiff sought \$ 5 million in damages under 42 U.S.C. § 1983 from six
defendants (law enforcement officers and the county employing them) for violation of his
constitutional rights from an alleged beating the plaintiff sustained during a traffic stop.

1 Following two jury trials, the plaintiff obtained \$25,000 in damages against one defendant,
2 Brian Alvarez, a deputy sheriff. *Id.* at 17-18. The plaintiff sought attorney's fees and costs
3 totaling \$120,819.40. *Id.* at 18. The Ninth Circuit affirmed the district court's 50% lodestar
4 reduction due to partial success. It found persuasive "the amount of damages recovered
5 versus the amount sought, and the number of claims prevailed upon versus the number of
6 claims dismissed or decided in defendant's favor." *Id.* at 18-19. Here, Plaintiff achieved
7 better success than the *Harris* plaintiff. Mr. Guerrero prevailed against all Defendants.
8 Additionally, he obtained make-whole equitable relief in the form of reinstatement,
9 rescission of adverse job rejections and \$140,362 in backpay. As Defendants did not raise
10 this, Plaintiff's waiver of unspecified damages for emotional distress is not an issue. Again,
11 Plaintiff did not seek multi-millions in damages.

12 Similarly, Defendants' reliance on *Navarro v. General Nutrition Corp.*, 2005 U.S.
13 Dist. LEXIS 39726 (N.D. Cal. Sept. 22, 2005) (Armstrong, J.), is misplaced. In *Navarro*,
14 the plaintiff sued her former employer and supervisor, alleging six federal and state claims
15 ranging from wrongful termination, discrimination, retaliation, unfair competition and
16 violation of medical leave laws. *Id.* at *4-5. After trial, the jury found in favor of the
17 plaintiff on her Family Medical Leave Act interference claim against only the former
18 employer and awarded \$60,500 in damages. *Id.* at *11. The plaintiff requested \$687,647.87
19 in attorney's fees. *Id.* at *12. The district court made a 40% lodestar reduction due to
20 "quite limited" success. *Id.* at *51, 54. It was persuaded by: (1) the lack of success on three
21 related claims, (2) the \$665,500 sought versus the \$60,500 in back pay awarded, (3) lack of
22 recovery on front pay, emotional distress and punitive damages and (4) lack of reinstatement
23 or other injunctive relief. *Id.* at *51-52. It was also persuaded by the unnecessarily
24 extended proceedings. *Id.* at *53. For the reasons stated in discussing *Harris* above,
25 Plaintiff's success here is not as limited as the plaintiff's result in *Navarro*. Moreover, LAS
26 brought Plaintiff's disparate impact and constitutional claims to trial in eighteen months.

In sum, this report finds that Plaintiff's lawsuit achieved good—but not excellent—overall results. Plaintiff won on the core Title VII disparate impact claim, but lost on his federal constitutional claims. Plaintiff obtained make-whole equitable relief, but not broad systemic reforms of CDCR and SPB. In light of this partial success, this report finds a **fifteen percent (15%) reduction** of the **\$1,395,656.12** lodestar is reasonable and appropriate. Thus, this report recommends awarding Plaintiff reasonable attorney's fees in the amount of **\$1,186,307.70** (exclusive of fees on fees).

V BILL OF COSTS AND LITIGATION EXPENSES

Under Title VII, a prevailing plaintiff is entitled to recover both her statutory costs and reasonable non-statutory litigation expenses incurred by her attorneys. *See, e.g., Davis*, 976 F.2d at 1556 (concluding that “attorneys’ fees awards can include reimbursement for out-of-pocket expenses” since they are “typically charged to paying clients by private attorneys”), *opinion vacated in part on denial of reh'g*, 984 F.2d 345 (9th Cir. 1993). These non-statutory litigation expenses include expert witness fees. 42 U.S.C. § 2000e-5(k) (district court, in its discretion, “may allow the prevailing party . . . a reasonable attorney’s fee (including expert fees) as part of the costs”)

A. Bill of Costs

Concurrently with this fee application, Plaintiff filed his Bill of Costs documenting \$22,469.61 in statutory costs. (Dkt. 295.) Neither CDCR nor SPB objected to the Bill of Costs. The Clerk of Court has taxed **\$20,569.01** against CDCR and SPB. (Dkt. 314.)

B. Litigation Expenses

Plaintiff also requests reimbursement for non-statutory litigation expenses totaling \$145,972.86. (Ho Decl. ¶ 66.) Plaintiff's lead counsel, Mr. Ho, declares under penalty of perjury that all expenses were documented within a system for contemporaneous record-keeping as expenses were incurred, and such expenses were incurred by LAS and its legal staff as part of this litigation to enforce Mr. Guerrero's rights. (Ho Decl. ¶ 47.) Plaintiff's

1 request details the specific expenses in a computer-generated printout reflecting case
2 expenditures and attaches copies of invoices or receipts organized by category of expense
3 and chronologically. (Dkt. 301, Exh. D; Ho Decl. ¶¶ 66-72.) Mr. Ho states he reviewed
4 Exhibit D, and it accurately reflects expenditures made by LAS as part of the litigation of
5 this case. (Ho Decl. ¶ 47; Dkt. 301, Exh. D.)

6 Except for one broad objection (addressed below), Defendants have not disputed any
7 of Plaintiff's non-statutory litigation expenses. Defendants have neither objected to any
8 category of expense (*e.g.*, travel, e-discovery, expert fees, etc.) as non-recoverable nor
9 objected to any particular invoice or receipt. Defendants have not objected to any of
10 Plaintiff's litigation expenses as unrecoverable, unnecessary, unreasonable, excessive or
11 duplicative.

12 This report recommends granting Plaintiff's request for **\$145,972.86** in non-statutory
13 litigation expenses. The claimed litigation expenses are reasonable. Notably, expert witness
14 fees amounted to \$106,814.80. (Dkt. 301, Exh. D pg. 4.) Exhibit D is a handy summary
15 table breaking down the expenses by category with subtotals and itemized descriptions
16 listing specific amounts. (Dkt. 301.) This report finds that the claimed expenses are the
17 type of expenses typically billed to fee-paying clients by private practice attorneys in San
18 Francisco. (Lee Decl. ¶ 18.)

19 SPB generally objects to Plaintiff's statutory costs and non-statutory litigation
20 expenses. It argues: "because Plaintiff's unsuccessful due process claim was unrelated to
21 his Title VII claim against SPB, any award of attorneys' fees, expenses, and costs should be
22 reduced to reflect his partial success." (SPB Opp. 10.) As discussed in Section III.B above,
23 the unsuccessful due process claim against SPB is related to Plaintiff's successful Title VII
24 claim. SPB, moreover, has cited no authority for the proposition that the lodestar reduction
25 for partial success under *Hensley* also applies to statutory costs and litigation expenses
26 recoverable under Title VII.

VI FEES ON FEES

Plaintiff is entitled to reasonable attorney's fees for work on his fee application. *Davis*, 976 F.2d at 1544; *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1387-1388 (9th Cir. 1990).

LAS states Project No. 87 on the fee application involved researching, reviewing time and expense records, drafting the motion for attorney's fees and reviewing Defendants' oppositions. LAS billed 69.6 hours for \$52,153.60, while its co-counsel Mr. Pearl billed 19.25 hours for \$14,918.75. (Dkt. 315-14, pg. 2.) Thus, the requested fees on fees is \$67,072.35. Defendants lodged no objections.

The report makes a \$16,355.23 reduction and finds **\$50,717.12** is reasonable. First, Mr. Ho's entries of 9/30/2015 and 10/2/2015 are denied for vagueness. Both are on discussions without identifying with whom. Next, the subtotal of \$66,733.05 is multiplied by 76%. This is the percentage of merits fees ultimately recovered.⁵ *See, e.g., Schwarz*, 73 F.3d at 909 (upholding application of merits fees recovery percentage to determine appropriate fees-on-fees award). For the reasons stated in Section VII.A below, this report recommends apportioning liability for reasonable fees on fees so that **CDCR is liable for eighty percent (80%) and SPB is liable for twenty percent (20%)**.

VII APPORTIONMENT AND STAY

A. Apportionment of Any Award

Where the conduct of one defendant "was the focus of the litigation and required a larger portion of the time of plaintiff's counsel, it is appropriate to allocate the burden of the fee award accordingly." *Sable Commc'ns of California Inc. v. Pac. Tel. & Tel. Co.*, 890 F.2d 184, 194 (9th Cir. 1989); *see also Corder v. Gates*, 947 F.2d 374, 382 (9th Cir. 1991)

⁵ The percentage of merits fees ultimately recovered was calculated as follows: \$1,606,857.40 (total claimed LAS fees, without claimed fees for Mr. Pearl) minus \$52,153.60 (claimed LAS fees on the fee motion) equals \$1,554,703.80; \$1,186,307.70 (adjusted lodestar) divided by \$1,554,703.80 equals 0.7630 for 76%.

1 (“the party that is the focus of the litigation should ordinarily bear the bulk of the litigation’s
 2 costs.”) In making such an allocation, the district court “also should take account of the
 3 extent of defendants’ culpability.” *Sable*, 890 F.2d at 194 (citations omitted.) However, the
 4 key on whether apportionment between defendants is proper and, then, allocating the fee
 5 liability amongst them is “the *time expended* by the plaintiff in pursuing each defendant.”
 6 *Corder*, 947 F.2d at 382 (emphasis in original). After summarizing its prior decisions on
 7 apportionment, The Ninth Circuit in *Corder* held:

8 Thus, since the total amount of attorney’s fee liability faced by any group
 9 of defendants is based on the number of hours that the plaintiff reasonably
 10 expended against them, the defendants’ rights *inter se* should share this
 feature. And under *Adams*, *Sable*, and *Woods*, the defendants’ rights *inter*
 se do share this feature.

11 *Id.* at 382-83.

12 Pointing to CDCR as the main focus of this litigation, SPB argues that any award of
 13 attorney’s fees, costs and expenses should be apportioned so that at least 90%, if not 100%,
 14 of the award is borne by CDCR. (SPB Opp. 12.) SPB advanced this position in its first
 15 opposition to the fee motion. Both CDCR and Plaintiff had the opportunity to respond on
 16 the second round of submissions. Neither CDCR nor Plaintiff has lodged any objection.

17 The report rejects SPB’s view that CDCR shoulder 90% or 100% of any award. In
 18 positing these bald percentages, SPB has not cited to any LAS billing records, much less
 19 billing records showing that 90% of reasonable hours was devoted to CDCR. (SPB Opp.
 20 11-12.) This report, however, recognizes that SPB advanced its position before LAS filed
 21 its supplemental declaration. This was the first time LAS filed re-organized billings records
 22 divided on a project-by-project basis. This was crucial to feasibly determine how LAS
 23 allocated large portions of its time to either CDCR, SPB or both.

24 This report finds it is proper to apportion Defendants’ liability for any award to
 25 Plaintiff of reasonable attorney’s fees and fees on fees. This report recommends allocating
 26 the burden so that **CDCR is liable for eighty percent (80%)** and **SPB is liable for twenty**

1 **percent (20%).** The 80/20 split was determined using a multi-step method based on the
 2 project-by-project breakdown of reasonable fees for each recoverable project (see Section
 3 III.C above). First, each recoverable project was divided into three categories based on
 4 subject matter: (1) CDCR⁶, (2) SPB⁷ and (3) Mixed.⁸ The majority of projects under
 5 categories (1) and (2) were dispositive motions, written discovery and depositions.

6 Second, the reasonable fees from specific projects within each category were added.
 7 For CDCR Projects, the amount is \$480,633.15. For SPB Projects, the amount is
 8 \$109,366.20. For Mixed Projects, the amount is \$805,656.77.

9 Third, the 80/20 split was determined as follows: \$480,633.15 plus \$109,366.20
 10 equals \$589,999.35; \$480,633.15 divided by \$589,999.35 equals the CDCR percentage
 11 rounded to 80%; and \$109,366.20 divided by \$589,999.35 equals the SPB percentage
 12 rounded to 20%. Here, the total amounts on defendant-specific fees are a valid and good
 13 proxy for the number of reasonable hours expended by LAS on each defendant throughout
 14 this litigation. Both CDCR and SPB were sued together in the initial complaint, and both
 15 remained for the bench trial. While not perfect or the most precise, this method of
 16 apportionment is reasonable, fair and based on quantitative data.

17 This report declines to apportion the Bill of Costs or the litigation expenses. SPB
 18 has proffered no authority for this approach.

19 **B. Stay of Any Award**

20 With SPB joining CDCR's contentions, Defendants argue the Court should stay any
 21 award of fees, costs and expenses until after all appeals have been exhausted in this case.
 22 CDCR advanced this position in its first opposition to the fee motion. Plaintiff had the

23 _____
 24 ⁶ CDCR Projects are: 12, 14, 20, 25, 27, 29, 31, 33, 34, 35, 36, 39, 40, 41, 42, 43, 49, 50, 51,
 52, 55, 57, 67, 89.

25 ⁷ SPB Projects are: 11, 13, 15, 21, 26, 28, 30, 44, 45, 46, 47, 56, 58, 91.

26 ⁸ Mixed Projects are: 1, 2, 3, 5, 6, 7, 8, 9, 10, 16, 18, 19, 22, 23, 24, 37, 38, 48, 53, 54, 59,
 60, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85,
 86, 92, 95.

1 opportunity to respond on the second round of submissions. Plaintiff has not lodged any
2 objections. This report recommends staying any award of reasonable attorney's fees, costs
3 and expenses until after all appeals have been exhausted.

4 **CONCLUSION**

5 Based on the foregoing, this report finds and recommends that the Court award to
6 Plaintiff the following:

- 7 (1) reasonable attorney's fees of **\$1,186,307.70**;
8 (2) statutory costs of **\$20,569.01**;
9 (3) non-statutory litigation expenses of **\$145,972.86**; and
10 (4) fees on fees of **\$50,717.12**.

11 The report also recommends apportioning the total fee award of **\$1,237,024.82** so that
12 CDCR is liable for **eighty percent (80%)** and SPB is liable for **twenty percent (20%)**.
13 This results in **\$989,619.86** for CDCR and **\$247,404.96** for SPB. As for special master fees
14 on this matter, the undersigned will submit hours billed and a proposal for expense
15 allocation by **May 4, 2016**.

16
17 Dated: April 29, 2016

18 /s/
19 CHRISTINA CHEN
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