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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

NATIONAL RIFLE ASSOCIATION OF AMERICA; JOHN DOE, Plaintiffs, vs. CITY OF LOS ANGELES; ERIC GARCETTI, in his official capacity as Mayor of the City of Los Angeles; HOLLY L. WOLCOTT, in her official capacity as City Clerk of the City of Los Angeles, and DOES 1-10, Defendants.	Case No.: 19-cv-03212-SVW-GJS **DEFENDANT CITY OF LOS ANGELES' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES** Date: June 15, 2020 Time: 1:30 p.m. Ctrm: 10A-First Street Courthouse Judge: Hon. Stephen V. Wilson Action Filed: 04/24/2019

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I. INTRODUCTION

Plaintiffs seek a **$342,222** lodestar for **865.8 hours**, plus a **1.25 lodestar multiplier**, and **$45,000** for "fees on fees" for a grand total of **$472,760.50**.

There was no discovery in this case,[1] and it did not go to trial. Plaintiffs filed a complaint and then a duplicative motion for preliminary injunction, opposed a motion to dismiss (recycling the same arguments contained in the preliminary injunction motion), and then settled the case. Yet, Plaintiffs staffed this case with **ten attorneys,** including four partners, a non-attorney clerk, and a paralegal. This overstaffing led to duplicative, excessive, and unnecessary billing, as described herein. Underscoring the simplicity of the case, one attorney handled it for the City. Declaration of Benjamin Chapman, ¶ 2.

Accordingly, the City requests that the Court significantly reduce the lodestar; find that there is nothing rare or exceptional justifying a 1.25 lodestar multiplier; and reduce the fees on fees by the same percentage the merits' request is reduced.

II. PROCEDURAL BACKGROUND

On February 12, 2019, the City Council passed City Ordinance No. 186000. It went into effect on April 1, 2019. On April 24, 2019, Plaintiffs filed a complaint alleging the ordinance violated the First Amendment to the United States Constitution.

On May 24, 2019, Defendants filed a motion to dismiss. ECF No. 15. The motion was opposed by Plaintiffs. ECF No. 24. Also on May 24, 2019, almost two months after the ordinance went into effect, Plaintiffs filed a preliminary injunction motion. ECF No. 19.[2] The motion was opposed by Defendants. ECF No. 23.

On December 11, 2019, the Court issued an order granting in part and denying in part Defendants' motion to dismiss, and granting a preliminary injunction enjoining the City from enforcing the ordinance. ECF No. 36. Five days later, on December 16, 2019, the parties first discussed a potential settlement, including repealing the ordinance.

[1] Plaintiffs served a single document request but the case was settled before the response date.

[2] Plaintiffs inexplicably claim that the motion to dismiss was filed "[w]hile the parties were briefing Plaintiffs' injunction motion." Mot. at 4:16-17. Not so. The docket entries confirm that the City's motion to dismiss was filed *before* Plaintiffs' preliminary injunction motion.

Chapman Decl., ¶ 3; ECF No. 52-10 at p.18. However, the City Council was on winter recess from December 13, 2019 to January 12, 2020, so it could not repeal the ordinance until it returned. On January 13, 2020, the Budget & Finance Committee approved a motion to repeal the ordinance. On January 21, 2020, the City Council repealed the Ordinance. Chapman Decl., ¶ 4.

On January 31, 2020, the parties filed a stipulated judgment reflecting the settlement of the matter. ECF No. 45. It was signed by the Court on February 6, 2020. ECF No. 48.

III. LEGAL STANDARD

The lodestar is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate. *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010). "The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

The requested hours "may be reduced by the court where documentation of the hours is inadequate; if the case was overstaffed and hours are duplicated; if the hours expended are deemed excessive or otherwise unnecessary." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *amended on other grounds by*, 808 F.2d 1373 (1987). The reasonable hourly rate is "the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Id.* at 1210-11. The "burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates" meet this standard. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008).

In civil rights cases, a "'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010). "Section 1988's aim is to enforce the covered civil rights statutes, not to provide a form of economic relief to improve the financial lot of attorneys." *Id*. (quotation marks omitted). Thus, "the district court must strike a balance between granting sufficient fees to attract qualified counsel to civil rights cases … and

avoiding a windfall to counsel." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) (citation omitted). "The way to do so is to compensate counsel at the prevailing rate in the community for similar work; no more, no less." *Id*.

IV. $342,222 IS NOT A REASONABLE LODESTAR.

A. The Requested Hours Should be Significantly Reduced because the Case was Overstaffed, the Hours Expended were Excessive, Duplicative, and Unnecessary, and the Document of Hours is Inadequate.

1. The case was overstaffed.

"[W]e begin with duplication of effort…. [T]hough it may be reasonable for a solvent client … to pay the additional costs of having a highly staffed case, … this does not mean that petitioner has established the reasonableness of billing that sort of duplication (or in this case triplication or more) to the public fisc." *In re North (Bush Fee Application)*, 59 F.3d 184, 190 (D.C. Cir. 1995) (per curiam) (citation omitted). Other courts have similarly held that "[i]t is unreasonable to require the losing party to pay for any unnecessary duplication of effort between two or three lawyers representing the prevailing party. A party … cannot expect to shift the cost of any redundancies to its opponent." *Signature Fin., LLC v. McClung*, No. CV 16-3621 DMG (FFMx), 2018 U.S. Dist. LEXIS 227978, at *10 (C.D. Cal. Aug. 13, 2018).

The Court has been particularly vigilant about over-staffing, and it has routinely disallowed billing for attorneys performing duplicative and unnecessary work. *See*, *e.g.*, *Garza v. City of Los Angeles*, No. 2:16-cv-03579-SVW-AFM, 2018 U.S. Dist. LEXIS 227294, at *9 (C.D. Cal. June 25, 2018) (disallowing the billing for motions and hearings for six out of eight attorneys on a case that went to trial because "the Court does not see the need for more than two attorneys to work on any motion or hearing"); *Curtin v. County of Orange*, No. SACV16-00591-SVW-PLA, 2018 U.S. Dist. LEXIS 233110, at *41-42 (C.D. Cal. Jan. 31, 2018) (disallowing the billing of four out of nine attorneys on a case that went to trial because "[t]he evidence Plaintiff provides to this Court does not show the necessity of any of these individuals") ("*Curtin I*").

This case was straight-forward; it involved two motions, there was no discovery, and it did not go to trial. There is no reason for **ten attorneys**, including four partners (Barvir, Michel, Dale, and Brady), to work on this case. Thus, the City requests that the Court limit billing in this matter to two attorneys—Barvir, the "Responsible Attorney" (ECF No. 52-4, ¶ 13), and Brady (argued for Plaintiffs at the hearing)—and a paralegal.[3]

2. Plaintiffs devoted an excessive, unnecessary, and duplicative number of hours to "motion practice."

Here, **nine attorneys, a non-attorney clerk, and a paralegal** billed **479.2 hours** to drafting two briefs—a preliminary injunction motion (ECF No. 19) and an opposition to a motion to dismiss (ECF No. 24). ECF No. 52-4, Exh. C (abbreviation "MOT" refers to these two briefs).[4] This time is both excessive and duplicative.

As the Court has also noted, it is "authorized to trim the fat where it finds excessive billing." *Bobrick Washroom Equip., Inc. v. Am. Specialties, Inc.*, No. CV 10-6938 SVW (PLA), 2013 U.S. Dist. LEXIS 198593, at *19-20 (C.D. Cal. Feb. 20, 2013). As discussed below, **479.2 hours** to draft two briefs—and specifically, *these* two briefs—is excessive.

Moreover, Plaintiffs do not explain why preparing these two briefs took **nine attorneys and a non-attorney clerk**. ECF No. 52-4, ¶¶ 55-65. As the Court has repeatedly held, "the claim by several attorneys for compensation for time spent on the same activity necessarily raises the question of whether there has been an unnecessary duplication of effort of multiple attorneys …. A reduction in allowable hours for the claims of multiple attorneys is warranted if the attorneys are unreasonably doing the same work." *Bobrick*, 2013 U.S. Dist. LEXIS 198593, at *20-21 (quotation marks and citation omitted); *U.S. v. One 2008 Toyota Rav 4 Sports Util. Vehicle*, No. 2:09-cv-05672-SVW-PJW, 2012 U.S. Dist. LEXIS 158417, at *19-20 (C.D. Cal. Oct. 18, 2012) (same)

[3] Plaintiffs' lodestar includes **85.4 hours** for **three law clerks** ($14,518). ECF No. 52-4, Exh. C. None of them filed declarations setting forth their qualifications, etc. One (Israelitt) is not even a lawyer. ECF No. 52-4, ¶ 31. Plaintiffs have not provided any evidence that law clerk time "could reasonably have been billed to a private client." *Moreno*, 534 at 1111. It should not be billed to taxpayers either.

[4] Plaintiffs do not even specify how much time was spent on each brief. *See, e.g.*, ECF No. 52-4, ¶¶ 55-65 (lumping together all the time spent on "motion practice").

(hereafter, *Toyota*).

As discussed below, a reduction in hours for duplication is warranted because Plaintiffs' "moving papers and declarations fail to discharge the burden of explaining why it was necessary for [nine] attorneys to spend so many hours on these motions. Making matters worse, [the attorney]'s declarations do not contain any information for the Court to discern each lawyer's distinct contribution to the preparation of each motion." *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *21-23 (across-the-board percentage reduction to account for duplicative hours spent on motions).

Accordingly, to account for excessive and duplicative billing, the Court should reduce the **479.2 hours** spent on the two briefs by 80%. *See*, *e.g.*, *Bobrick*, 2013 U.S. Dist. LEXIS 198593 at *18-27 (80% across-the-board reduction to hours spent on two motions to account for "pervasive billing of unrelated, excessive, or unnecessarily duplicative tasks," the "inclusion of … improper billings, coupled with the lack of billing detail," and block-billing).

a. Plaintiffs spent excessive, unnecessary, and duplicative hours drafting the preliminary injunction motion.

Here, at least **five attorneys, a clerk, and a paralegal** spent more than **249 hours**[5]—the equivalent of a single attorney working on the motion eight hours a day, five

[5]

Attorney	Total Hours	Rate	Fees
Barvir	161.4	$475	$76,665
Frank	32.3	$350	$11,305
Cheuvront	27.8	$325	$9,035
Khundkar	13.3	$300	$3,990
Law Clerk (Israelitt)	7.8	$170	$1,326
Palmerin	6.7	$170	$1,139
Brady	0.20	$475	$95
Total:	249.5		$103,555.00

The City compiled these numbers by identifying time entries explicitly referencing the preliminary injunction motion (or the "MPI"). These entries are contained in Exhibit A to the Chapman Decl. Plaintiffs likely seek reimbursement for additional hours; however, because the time entries are so heavily redacted, the City cannot ascertain whether other entries relate to the motion.

days a week for more than six weeks—drafting the preliminary injunction motion. This is excessive because the motion was straight-forward and duplicative of the Complaint:

- Pages 3-6 of the motion (Section II) are copied nearly verbatim from paragraphs 29-49 of the Complaint. *Cf*. ECF No. 19-1 at 3 (paragraph starting "The state of California….") *with* ECF No. 1 ¶ 29.
- The motion's discussion of the freedom of association claim principally relies on the same case as the Complaint, *NAACP v. State of Alabama ex rel. Patterson*, 357 U.S. 449 (1958). *Cf*. ECF No. 19-1 at 7-8 *with* ECF No. 1, ¶¶ 19-20.
- The motion's discussion of the free speech claim is copied nearly verbatim from the Complaint. *Cf*. ECF No. 19-1 at 12-13 *with* ECF No. 1, ¶¶ 14-16.
- The motion's discussion of the compelled disclosure claim principally relies on the same two cases cited in the Complaint. *Cf*. ECF No. 19-1 at 14-15 *with* ECF No. 1, ¶¶ 17-18.
- The motion's discussion of the First Amendment retaliation claim cites and quotes the same case as the Complaint. *Cf*. ECF No. 19-1 at 17 *with* ECF No. 1, ¶ 21.
- The motion's discussion of the Equal Protection claim cites and quotes the same cases as the Complaint. *Cf*. ECF No. 19-1 at 18 *with* ECF No. 1, ¶¶ 25-26.
- The motion's exhibits were previously cited in the Complaint. *Cf*. ECF No. 19-4, Exh. 25 (O'Farrell tweets) *with* ECF No. 1, Exh. 3 (same O'Farrell tweets).

In sum, it is not clear that any independent work—outside of drafting the introduction, the legal standard, and the 1.5 page discussion of the remaining preliminary injunction factors—went into drafting the motion.[6] *See, e.g.*, *Bobrick*, 2013 U.S. Dist. LEXIS 198593, at *25-27 (applying a percentage reduction to hours spent drafting a motion because the Court was "shocked that two senior attorneys" billed 130 hours on a 25-page motion); *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *20-23 (reducing hours spent drafting an opposition to a motion to dismiss from 35 to 18 because "[i]n the Court's

[6] Plaintiffs' counsel billed an additional 136.9 hours to the Complaint. ECF No. 52-4, Exh. C. This includes numerous time for legal research and drafting. *See, e.g.*, ECF No. 52-10 at p.1 (1/24/2019, Cheuvront billed 3.0 hours to "Draft complaint for City of L.A."); *id*. at p.7 (4/19/2019, Barvir billed 5.80 hours to "Draft and revise Complaint; conduct legal research as needed and discuss [REDACTED]."). So Plaintiffs' counsel is being reimbursed for this work; they should not be reimbursed for the same work twice.

experience, and based on its foregoing observations of the[] motion[]," that is how long "it would take a reasonable attorney with [the specific attorney]'s experience to complete [the] motion on his own").

The time sheets highlight the excessive billing. For example, Barvir, "a seasoned constitutional law attorney" and partner (ECF No. 52-4, ¶ 11), spent more than **150 hours** on the motion. However, her time is so vaguely described, it is impossible to know what she specifically worked on. For example, Barvir regularly billed large chunks of time to "Draft memorandum of Points and Authorities ISO Motion for Preliminary Injunction; conduct legal research as needed." *E.g.*, ECF No. 52-10 at p.5 (2/25/2019, 4.9 hours). Overall, she billed more than 80 hours to vaguely "drafting" the motion and "conducting legal research." *Id*. at pp.3-10 (2/14/2019 to 5/22/2019). In sum, Barvir's time spent on the motion is excessive. *See, e.g.*, *Bobrick*, 2013 U.S. Dist. LEXIS 198593, at *20 ("[I]t remains hard to rationalize many of these claimed hours…. It is … difficult to justify … extensive hours spent on vague or mundane tasks, such as … 9.4 hours in a day on 'preparation of motion for spoliation of evidence for service on [Defendant].'").

The equal protection section of the motion also reveals excess. It is 1.5 pages and cites just two cases—the same two cases cited in the Complaint. *Cf*. ECF No. 19-1 at 18-19 *with* ECF No. 1, ¶¶ 23-26. Yet Frank spent **21.3** hours researching and drafting this section. ECF No. 52-10 at pp.5-6. And this is on top of whatever time Barvir spent on this section when she was "drafting the motion."

Moreover, the duplication inherent in having at least five attorneys (and a non-attorney clerk) bill more than 250 hours to drafting the motion is confirmed, to the extent possible given the number of redactions, by the billing records. For example:

- Cheuvront vaguely billed 4.0 hours to "Draft Motion for Preliminary Injunction." ECF No. 52-10 at p.2 (2/7/2019).
- Khundkar billed seven hours to unspecified "legal research" and "check case citations." *Id*. at p.9 (5/21/2019, 2.50 hours); *id*. at p.11 (5/24/2019, 4.50 hours).

Yet, this time is duplicative of Barvir's time spent drafting the motion and conducting legal research "as needed." *See, e.g.*, *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *21-22 (time entries such as "Preparation of opposition to motion to dismiss without prejudice" were so vague that the Court could not "identify and deduct only the hours that were duplicative. Accordingly, the Court concludes that it is necessary to apply a percentage reduction to each attorney's claimed hours with respect to these motions."). And because the time entries are so vague and redacted, it is impossible to know what specific contributions each attorney made to the preliminary injunction motion, thereby hiding even further duplication.[7]

For all of these reasons, the Court should find based on its own knowledge and experience that it should not have taken more than on attorney 50 hours—an 80% reduction of the 250 hours billed specifically to the motion—to simply transfer the work done from the Complaint to the preliminary injunction motion. *Bobrick*, 2013 U.S. Dist. LEXIS 198593, at *19-24; *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *23.

b. Plaintiffs spent excessive, unnecessary and duplicative hours drafting the opposition to motion to dismiss.

Four attorneys and a paralegal spent at least **80 hours**[8] drafting a straight-forward opposition to the City's motion to dismiss. This time should be reduced by 80% because

[7] Plaintiffs' declarations are similarly unhelpful. *See, e.g.*, ECF No. 52-4, ¶¶ 55-65 (Barvir declaration lumps together the time spent on "motion practice" without identifying the specific contributions each attorney made to each brief).

[8]

Attorney	Total Hours	Rate	Fees
Brady	40.6	$475	$19,285
Cheuvront	28.9	$325	$9,392.50
Law Clerks (Austin)	7.1	$170	$1,207
Barvir	1.4	$475	$665
Palmerin	2.6	$170	$442
Total:	80.6		$30,991.50

The City compiled these numbers by identifying time entries explicitly referencing the opposition to the motion to dismiss, the word "opposing," or legal research where the subject matter was related to the opposition. These entries are contained in Exhibit B to the Chapman Decl. As with the preliminary injunction motion, Plaintiffs are likely seeking reimbursement for additional hours; however, the time entries are so heavily redacted, the City cannot ascertain whether other entries relate to the opposition.

it is both excessive and duplicative.

The time spent on the opposition to the motion to dismiss is excessive because it is cut and pasted nearly verbatim from the preliminary injunction motion. For example:

- Section I of the Factual Background section of the opposition to the motion to dismiss is nearly identical to the same section in the PI motion. *Cf.* ECF No. 24 at 2-3 *with* ECF No. 19-1 at 1-3.
- Pages 11-22 of the opposition are copied nearly verbatim from pages 7-19 of the PI motion. *Cf.* ECF No. 24 at 7-19 with ECF No. 19-1 at 11-22.
- Page 15 of the opposition is exactly the same as Page 12 of the PI motion, except two non-substantive sentences have been added to the opposition between the paragraphs. *Cf.* ECF No. 24 at 15 *with* ECF No. 19-1 at 12.
- 26 of the 38 cases cited in the opposition were cited in the PI motion (of the remaining cases, two are for the legal standard on a motion to dismiss, and others were cited by Defendants in their motion to dismiss). *Cf.* ECF No. 24 (table of contents) *with* ECF No. 19-1 (table of contents).

Moreover, there was significant duplication of work on the opposition. As just one example, three lawyers billed for the exact same work:

- 6/10/2019, Cheuvront billed 6.40 hours to "research re Motion to Dismiss," "Begin drafting Opposition to Motion to Dismiss," and "Draft[ing] final version of outline for Opposition to MTD." ECF No. 52-10 at p.12.
- 6/11/2019, Austin billed 7.10 hours to "research re TDC specified cases." *Id.*
- 6/25/2019, Brady billed 10.10 hours to "Analyze City's arguments for why the ordinance does not violate each of the respective claims; draft notes for how to address in brief opposing motion to dismiss; draft arguments and conduct related research and review as necessary." *Id.* at p.14.

See, e.g., Toyota, 2012 U.S. Dist. LEXIS 158417, at *21-23 (applying an across-the-board percentage reduction where the "moving papers and declarations fail to discharge the burden of explaining why it was necessary for two attorneys to spend so many hours on [the] motion[]," and vague billing entries made it impossible to "discern each lawyer's distinct contribution to the preparation of [the] motion").

In sum, there is simply no justification for **four attorneys** to bill at least **80 hours** (and likely significantly more) for an opposition that contained scant original content. *See*, *e.g.*, *id.* at *20-21 ("The Court … doubts it was necessary for two attorneys to spend 35 hours on the Opposition to the Motion to Dismiss …, considering that only 10 pages of the document consisted of substantive legal argument," and "less than a handful of cases reflected original research."). The opposition could have been drafted by a single attorney in two days at most. Accordingly, the Court should reduce the time allowed for the opposition by 80% (from 80.6 hours to 16 hours). *Bobrick*, 2013 U.S. Dist. LEXIS 198593, at *19-24.

3. Plaintiffs spent an unnecessary and duplicative number of hours working on the settlement.

At least **seven attorneys** (and unspecified law clerks) spent **111.7** hours working on the settlement. ECF No. 52-4, Exh. C. This time should also be reduced by 80%.

The settlement is straight-forward, as reflected by the two-page stipulation of settlement (ECF No. 45); indeed, it took Barvir only 4.1 hours to draft it. ECF No. 52-10 at p.26 (1.10 hours on 1/28/2020 and 3.0 hours on 1/29/2020).

It did not take long to negotiate the settlement either. The parties first discussed settlement on December 16, 2019. ECF No. 52-10 at p.18. The stipulation of settlement was filed on January 31, 2020. ECF No. 45. The delay was due in large part to the fact that the City Council was on recess from mid-December to January 13, 2020, so it could not repeal the ordinance during that time. Chapman Decl. ¶ 4.

Nor did the settlement require a significant amount of negotiation. Indeed, the billing entries reflect just 13 communications between counsel related to settlement.[9] Thus, for **seven attorneys** to bill **111.7** hours in a month and a half to such a simple settlement—over the holidays no less—is excessive.

As with the motions, it is difficult for the City to unmask the excess and duplication

[9] There is a 1/27/2020 Michel entry indicating "correspondence with opposing counsel." City Attorney Chapman has never had any correspondence with Michel.

associated with the settlement because of the redactions to the billing entries. While Plaintiffs claim they worked **111.7 hours** on the settlement (ECF No. 52-4, Exh. C), the City can only account for 26 hours based on billing entries that explicitly reference the terms "settlement, "stipulation," or "judgment," as well as entries that on their face reference the City repealing the Ordinance. Chapman Decl. Exh. C. Thus, Plaintiffs seek reimbursement for more than 80 hours of time entries that are so heavily redacted, the City cannot ascertain whether they relate to the settlement.

For example, on January 23, 2020, **four attorneys** billed a total of **11 hours** to the case, yet the only ascertainable work that can be gleaned is 3.6 hours of non-compensable time spent by Barvir reviewing billing entries in preparation for this motion. ECF No. 52-10 at p.25. The remainder of the time is so heavily redacted that neither the City nor the Court could possibly judge whether the work was an appropriate basis for fees. *See*, *e.g.*, *id*. (Austin billed 2 hours to "meeting with AMB to [REDACTED]."); *id*. (Barvir billed 1.60 hours to "Draft correspondence to [REDACTED]."). Do these entries relate to the settlement? And were they reasonably expended?

In sum, given the simplicity of the settlement, the duplication inherent in having **seven attorneys** (plus law clerks) bill time this task, and the fact that it is impossible to evaluate the vast majority of the billing entries because of the heavy redactions, an 80% reduction in time spent on settlement is appropriate.

4. Plaintiffs spent an unnecessary and duplicative number of hours preparing for trial.

Seven attorneys spent **75.6** hours preparing for a trial in this matter that was never going to take place. ECF No. 52-4, Exh. C. This time should also be reduced by 80%.

Here, as best the City can tell given the redactions, Plaintiffs spent roughly 42 hours drafting pre-trial documents. Chapman Decl. Exh. D (chart compiling trial preparation entries). Yet, these were simple documents that should have taken a fraction of this time.

For example, Plaintiffs billed **11.3 hours** to draft the exhibit list. ECF No. 52-10 at pp.22, 24 (1/15, 1/16, Cheuvront billed 5.7 hours total; 1/15, 1/16, 1/21, Barvir billed 2.6

hours total; 1/21, Brady billed 3.0 hours). Of the 46 documents identified on the exhibit list, 32 were attached either to the Complaint or the preliminary injunction motion. *Cf.* ECF No. 44 *with* ECF Nos. 1-1, 1-2, 1-5, 1-6, 1-8, 1-9 and ECF No. 19-2 (describing documents attached to the motion). The remaining exhibits were taken from the City's website or were provided to Plaintiffs through public records requests—they could have been compiled in minutes. In sum, the exhibit list should have been drafted in less than two hours.

Plaintiffs spent **31 hours** preparing the memorandum of contentions of fact and law. ECF No. 40. A review of this document generously reveals that it could have been drafted by a single attorney in 10 hours (at most).

Yet again, it is difficult for the City to unmask the excess and duplication because of the redactions to the billing entries. While Plaintiffs claim they worked 75.6 hours on trial preparation (ECF No. 52-4, Exh. C), the City can only account for 53.6 hours. Chapman Decl. Exh. D. Thus, Plaintiffs seek reimbursement for more than 20 hours of time entries that are so heavily redacted, the City cannot ascertain whether they relate to preparation for trial, let alone whether they were reasonably expended.

For example, on January 16, 2020, **seven attorneys** billed **21.90 hours** to the case, yet only 9.40 hours of this time can be accounted for (Cheuvront, Frank, and Barvir billed time to preparing pre-trial documents; Brady billed time to analyzing a potential damages action). ECF No. 52-10 at pp.22-23. The remainder of the time is set forth in billing entries that are so heavily redacted and vague that neither the City nor the Court could possibly judge whether the work was trial-related, let alone whether it was reasonable:

- Frank billed 2.70 hours to "Analyze authorities re [REDACTED]." ECF No. 52-10 at p.22.
- Barvir billed 1.10 hours to "Multiple meetings with SAB and with AAF and JRD to discuss [REDACTED]." *Id.* at p.23.
- Brady billed 0.50 hours to "Telephone conference with CDM re [REDACTED]." *Id.*
- Moros billed 1.60 hours to "Analyze cases [REDACTED]." *Id.*

In sum, given the simplicity of the trial preparations, the duplication inherent in having **seven attorneys** (plus law clerks) bill time to preparing for trial, and the fact that it is impossible to evaluate the vast majority of the billing entries because of the heavy redactions, an 80% reduction in time spent preparing for trial is appropriate.

5. Duplicative billing for intra-office meetings and communications should also be excluded.

As the Court has held, "[n]ormally, [w]hen attorneys hold a telephone or personal conference, good 'billing judgment' mandates that only one attorney should bill that conference to the client, not both attorneys." *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *24 (quotation marks omitted); *see also Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) (affirming reduction of hours for "unnecessary and duplicative" intraoffice conferences); *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 982-83 (S.D. Cal. 2014) (across-the-board reduction of hours because "[c]ourts often discount or altogether exclude hours claimed for intraoffice and administrative e-mails and other intraoffice communications when [they] are the result of overstaffing or inflationary billing practices").

Here, as detailed in the chart attached as Exhibit E to the Chapman Decl., and as summarized below, there were more than **43 duplicative hours** billed to in-person, telephonic, and e-mail communications between attorneys; i.e., where more than one attorney billed for the *same* meeting or correspondence. Eliminating the hours billed for the junior attorney(s) results in the following reductions of hours and fees:

Attorney	Total Hours	Rate	Reduced Total Fee
Barvir	17.7	$475	$8,407.50
Brady	11.9	$475	$5,652.50
Cheuvront	8.3	$325	$2,697.50
Dale	1.8	$550	$990
Frank	1.7	$350	$595
Khundkar	0.20	$300	$60
Law Clerks (Austin, Okita and Israelitt)	1.7	$170	$289
Total:	43.3		$18,691.50

Accordingly, all of this time should be disallowed because duplicative senior attorney(s) billable hours are already being reimbursed.

6. Clerical work should be excluded.

As the Court has held, "[a]ctivities that can be classified as secretarial or clerical in nature generally cannot be recovered as attorney's fees under the lodestar methodology." *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *33; *see also Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009) (disallowing recovery for clerical tasks). Among the tasks which district courts have deemed "clerical or ministerial and therefore not compensable [are]: reviewing Court-generated notices; scheduling dates and deadlines; calendering dates and deadlines; notifying a client of dates and deadlines; preparing documents for filing with the Court; filing documents with the Court; informing a client that a document has been filed; personally delivering documents; bates stamping and other labeling of documents; maintaining and pulling files; copying, printing, and scanning documents; receiving, downloading, and emailing documents; and communicating with Court staff." *Haw. Motorsports Inv., Inc. v. Clayton Group Servs*., No. 09-00304 SOM-BMK, 2010 U.S. Dist. LEXIS 127448, at *15 (D. Haw. Dec. 1, 2010).

Here, as set forth in Exhibit F to the Chapman Decl., **31.5 hours ($5,355)**—all of paralegal Palmerin's time—is "clerical work." *See*, *e.g*., ECF No. 52-10 at p.11 (5/24/2019, 4.8 hours billed to preparing preliminary injunction motion for filing); *id*. at p.12 (5/28/2019, 1.20 hours billed to preparing courtesy copy for the Court). Accordingly, this time should be deducted. *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *33.

7. The documentation of hours is inadequate because the billing records contain numerous redacted entries that are too vague to identify the general subject matter of the time expenditure.

"The burden of establishing entitlement to an attorneys' fees award lies solely with the claimant…. Plaintiff's counsel is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures…. Where the documentation is inadequate, the district

court is free to reduce an applicant's fee award accordingly." *Trustees of the Directors Guild of Am.-Producer Pension Benefit Plans v. Tise*, 234 F.3d 415, 427 (9th Cir. 2000) (quotation marks and citations omitted). Thus, as the Court has repeatedly held, "courts have deducted hours where the billed entries are too vague or appear to be excessive." *Toyota*, 2012 U.S. Dist. LEXIS 158417, at *28-31; *see also Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480-SVW (FFMx), 2010 U.S. Dist. LEXIS 71598, at *16 (C.D. Cal. June 30, 2010) (deducting time for "undefined 'email correspondence'" since "[t]hese entries fail to define the task with the specificity that is required by Circuit precedent").

"Courts typically disallow hours where the billing entries are redacted to such an extent that the court cannot discern what the time was spent on, and therefore, cannot determine whether the time was reasonably expended on the litigation." *Mitchell v. Chavez*, No. 1:13-cv-01324-DAD-EPG, 2018 U.S. Dist. LEXIS 109386, at *22-23 (E.D. Cal. June 29, 2018) (deducting for time entries such as "case analysis regarding [REDACTED]" because "[i]f the unredacted portion of the time entry provides no information about what the research or analysis may have pertained to, the court cannot determine whether the time was reasonably expended in pursuit of this case."); *see also Signature Networks, Inc. v. Estefan*, No. C 03-4796 SBA, 2005 U.S. Dist. LEXIS 49124, at *22 (N.D. Cal. May 25, 2005) (20% across-the-board reduction for redacted time entries because "the failure to provide even a general description of the subject matter renders it impossible to assess the reasonableness of many of [the time] entries").

Here, the time sheets contain numerous entries that are so redacted it is impossible to discern even the general subject matter of the task, let alone whether the time was reasonably expended. For example:

- 7/3/2019, Brady billed 4 hours to "analyze notes re [REDACTED]." ECF No. 52-10 at p.15.
- 1/9/2020, Barvir billed 3.60 hours to "Continue to draft, review, and revise memorandum [REDACTED]." *Id*. at p.20.
- 1/17/2020, Brady billed 1.80 hours to "Analyze items [REDACTED]; analyze legal questions re [REDACTED]." *Id*. at p.24.

- 2/20/2020, Brady billed .20 hours to "Exchange emails with staff [REDACTED]." *Id*. at p.27.

There are more than a hundred similar entries like these. Accordingly, the Court should apply a 20% across-the-board deduction for redacted time entries. *Signature Networks, Inc.*, 2005 U.S. Dist. LEXIS 49124, at *22.

8. Miscellaneous time entries that should be excluded.

First, on 2/25/2019, non-attorney Israelitt billed **1 hour** to "Draft statement of facts for Rule 26(f) Report." ECF No. 52-10 at p.5. No such report was filed, and this was months before the Complaint was even filed.

Second, Palmerin (2.5 hours), Frank (1.2 hours) and Brady (1.6 hours) billed **5.3 hours** to draft and file a joint stipulation to continue hearing dates on the motion to dismiss and preliminary injunction motion because Barvir had a death in the family. ECF No. 52-10 at p.13. The City shouldn't be charged for this since it stipulated to the continuance and the City did not cause the need for the continuance. ECF No. 21.

Third, Frank (17.4 hours), Barvir (1.6 hours), and Brady (.6 hours) billed **19.6 hours** to research and draft supplemental briefing following the preliminary injunction hearing. ECF No. 52-10 at p.16 (8/13 to 8/19/2019). This briefing was never filed. While some courts have awarded fees for unfiled motions, it is undisputed that this work was unnecessary to achieve the result. Accordingly, this time should be deducted as well. *See, e.g., Sierra Club v. McCarthy*, 235 F. Supp. 3d 63, 69 (D.D.C. 2017) (disallowing fees for unfiled motion because "the Court has a special responsibility to ensure that taxpayers are required to reimburse prevailing parties for only those fees and expenses actually needed to achieve the favorable result." (quotation marks omitted)).

B. Plaintiffs Fail to Establish Reasonable Rates for Certain Attorneys.

The City only contests the following attorney's rates:

Moros ($375/hr): Moros graduated from California Western School of Law in 2014; he then worked for four years in immigration law; he joined the law firm in 2019, where he focuses on "employment law." (ECF No. 52-8, ¶¶ 2-5.)

Cheuvront ($325/hr): Cheuvront graduated from Trinity Law School in 2017; she has worked at the law firm since December 2017, where she focuses "primarily on civil litigation and legislative matters." (ECF No. 52-6 ¶¶ 2-5.)

Khundkar ($300/hr): no declaration.

Law clerks ($170/hr): no declaration.[10]

Notably, none of these attorneys previously worked on a civil rights or First Amendment case, or on any case in which they were awarded fees. *See*, *e.g.*, *Vargas v. Howell*, 949 F.3d 1188, 1194 (9th Cir. 2020) (affirming reduction of requested rate where neither the motion nor the attorney's affidavit explained his experience or qualifications). The only support for these rates is found in a 2016 Real Rate Report attached to a declaration from a different case. ECF No. 52-4, Exh. D. But it does not address civil rights cases. *Moreno*, 534 F.3d at 1111 ("to attract qualified counsel to civil rights cases," counsel should be compensated "at the prevailing rate in the community for similar work; no more, no less"). Thus, Plaintiffs have "failed to produce satisfactory evidence" that their requested hourly rates are in line with those "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Grove*, 606 F.3d at 583. Accordingly, the Court should reject Plaintiffs' proposed rates. *Id.*; *see also Rickley v. County of Los Angeles*, No. CV 08-4918 SVW (AGR), 2011 U.S. Dist. LEXIS at *5-7 (C.D. Cal. Dec. 14, 2011) (rejecting $450/hour and instead awarding $275/hour for attorney with 15-20 years' experience given the attorney's "lack of expertise" with "constitutional claims").

The Court need not look far to find more appropriate rates. Plaintiffs rely on *Antuna v. County. of Los Angeles*, No. CV 14-5600-MWF (PLAx), 2016 U.S. Dist. LEXIS 189152 (C.D. Cal. Mar. 8, 2016) to support their requested rates. Mot. at 13:6-10. There, the district court found that $200/hour for midlevel associates with 5 years of experience and $100 for junior associates with 1-2 years of experience were "reasonable rates to attract competent civil rights counsel to do similar work." *Antuna*, 2016 U.S. Dist. LEXIS

[10] As previously discussed, supra fn.2, law clerk time should not be billed to the City.

189152 at *10. Thus, the Court should apply the following rates: $200 for Moros (five year attorney with no civil rights experience); $100 for Cheuvront (2 year attorney with no civil rights experience), $100 for staff attorney Khundkar (presumably 2 year attorney (Mot. at 16:23) with no civil rights experience).

V. PLAINTIFFS ARE NOT ENTITLED TO A 1.25 LODESTAR MULTIPLIER

After calculating the lodestar, the district court "must decide whether to enhance or reduce the lodestar figure based on an evaluation of the factors listed in *Kerr v. Screen Extras Guild, Inc*., 526 F.2d 67 (9th Cir. 1975), that are not already subsumed in the initial lodestar calculation." *Parsons v. Ryan*, 949 F.3d 443, 467 (9th Cir. 2020) (quotation marks omitted). However, "a strong presumption exists that the lodestar figure represents a reasonable fee." *Id*. (quotation marks omitted). As the Court has noted, "enhancements in fee awards under Section 1988 are rare and exceptional." *Curtin I*, 2018 U.S. Dist. LEXIS 233110, at *39.

Implicitly conceding that the majority of the twelve *Kerr* factors do not support an upward multiplier, Plaintiffs rely on just three. Mot. at 18-21. None support a 1.25 lodestar multiplier.

A. The "Results Obtained" Factor.

Plaintiffs' primary argument is that a 1.25 lodestar multiplier is justified because of the "exceptional results obtained." Mot. at 18-19. However, it is well established that "[u]nder the lodestar approach, many of the *Kerr* factors have been held subsumed in the lodestar determination as a matter of law…. These factors may not act as independent bases for adjustments of the lodestar." *Cunningham v. County of Los Angeles*, 879 F.2d 481, 487 (9th Cir. 1988) (citation omitted). Among the factors that are subsumed in the lodestar determination, and thus, "cannot serve as independent bases for adjusting fee awards are … the results obtained." *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987); *Cortes v. Metro. Life Ins. Co.*, 238 F. Supp. 2d 1125, 1120 (C.D. Cal. 2005) (same). Thus, Plaintiffs may not obtain a multiplier based solely on the

"results obtained."[11]

Even assuming arguendo the Court were to consider this factor, Plaintiffs' arguments that their "successful motion for preliminary injunction … led the City to repeal the challenged ordinance," and that their adversary was represented by a "high-quality legal opponent" are not persuasive. Mot. at 18-19. Plaintiffs do not cite a single case imposing an upward adjustment for either reason. Indeed, if that were the standard, upward adjustments would be fairly routine. They are not. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007) (upward adjustment to multiplier only appropriate in "rare and exceptional cases"); *Idaho Bldg. & Const. Trades Council, AFL-CIO v. Wasden*, No. 1:11-cv-00253-BLW, 2012 U.S. Dist. LEXIS, at *13-14 (D.Idaho Apr. 16, 2012) (denying a 1.25 multiplier where the plaintiff obtained a preliminary injunction because "[r]ather than providing details as to why such an enhancement should be given, [the plaintiff] conclusorily invokes its exceptional success as a justification…. These arguments, however, do not fit with Ninth Circuit precedent which emphasizes that 'results obtained' is 'now subsumed within the initial calculation of the lodestar amount.' (quoting *Cunningham*, 879 F.2d at 486)).

In sum, Plaintiffs do not cite any "specific evidence in the record" demonstrating that this is the "rare and exceptional case" justifying an upward departure from the lodestar, which subsumes Plaintiffs' favorable result. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).

B. The "Undesirability of the Case" Factor.

Plaintiffs argue that this factor supports a 1.25 lodestar multiplier because "[t]here is reason to believe that, even if generous fee recovery [sic] were guaranteed, many

[11] The only case Plaintiffs cite in support of their argument is *Hensley v. Eckerhart*, 461 U.S. 424 (1983). Mot. at 18:19-21. However, the Ninth Circuit has noted that while *Hensley* suggested that the "results obtained" could factor into awarding a *reduced* lodestar where the plaintiff only prevails on some claims, the Supreme Court has since modified that rule. *Gates v. Deukmejian*, 987 F.2d 1392, 1404 (9th Cir. 1992) ("In subsequent decisions modifying the *Hensley* holding, the Court has held that the 'results obtained' generally will be subsumed within other factors used to calculate a reasonable fee." (quotation marks omitted)). Thus, *Hensley* does not, and never did help Plaintiffs.

attorneys competent to litigate complex constitutional law cases would decline to represent [the NRA]." Mot. at 20:16-18. Plaintiffs do not cite a single case to support this argument. It is particularly inappropriate here given that the NRA is a long-time client of Plaintiffs' counsel. Chapman Decl., Exh. G ¶ 11 (NRA "has been a client of Michel & Associates … for over two decades.").[12] So Plaintiffs' counsel hardly needs additional incentive to represent a long-standing client. *See, e.g., Amico v. New Castle County*, 654 F. Supp. 982, 1002-03 (D.Del. 1987) ("In representing an adult entertainment entrepreneur, plaintiff's attorneys claim to represent perhaps the paradigm undesirable client…. But the two principal attorneys for plaintiff … make their living representing precisely such unpopular causes and have done so for many years…. Therefore, this Court will not allow a multiplier for the undesirability of the case.").

C. The "Time Limitations" Factor.

Plaintiffs argue that a 1.25 lodestar multiplier is justified because *the Court* set the matter for trial in late February 2020, and that "[t]his timeframe drove counsel to simultaneously devote themselves almost singularly to the responsibilities of trial preparation and settlement negotiations throughout January 2020." Mot. at 20-21. Yet again, Plaintiffs do not cite a single case to support this argument. Indeed, the Court recently rejected a similar argument. *See, e.g., Curtin v. County of Orange*, No. 8:16-cv-00591-SVW-PLA, 2018 U.S. Dist. LEXIS 225887, at *11-12 (C.D. Cal. Apr. 13, 2018) ("Plaintiff claims that her attorneys were required to dedicate much of their attention to this action in the weeks leading up to trial…. Under Plaintiff's argument, any case going to trial would require a lodestar multiplier, which is not supported by the caselaw."). Other district courts have also refused to apply a lodestar multiplier based on arguments that the case proceeded quickly to trial. *See, e.g., Lexington Ins. Co. v. Scott Homes Multifamily Inc.*, No. CV-12-02119-PXH-JAT, 2016 U.S. Dist. LEXIS 128806, at *68 (D.Ariz. Sept.

[12] Plaintiffs' counsel has represented the NRA in numerous cases. *E.g., Pena v. Lindley*, 898 F.3d 969 (9th Cir. 2018); *Linlor v. NRA of Am.*, No. 17cv203-MMA (JMA), 2017 U.S. Dist. LEXIS 81507 (S.D. Cal. May 26, 2017); *Owner-Operator Indep. Drivers Ass'n v. Cal.*, 2010 U.S. Dist. LEXIS 131610 (E.D. Cal. Dec. 2, 2010); *Cal. Rifle & Pistol Ass'n v. City of West Hollywood*, 66 Cal.App.4th 1302 (1998).

21, 2016) ("[T]he Court declines to adjust or enhance the attorneys' fees award based on this factor as the prospect of trial is inherent in litigation."); *Faubion v. City of Prineville*, No. CV-00-976-HU, 2001 U.S. Dist. LEXIS 19678, at *24-25 (D.Or. Nov. 7, 2001) ("Because moving a case to conclusion in a timely manner is … the responsibility of every lawyer in all cases, this provides no basis for adjustment of the lodestar.").[13]

VI. $44,983 FOR THIS FEE MOTION IS EXCESSIVE.

The Court has the discretion to reduce the amount of fees requested in conjunction with the preparation of a fee application (the so-called "fees-on-fees") if it concludes that such fees were not "reasonably expended." *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1199-1200 (9th Cir. 2002); *see also Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 909 (9th Cir. 1995) ("[T]he district court was well within its discretion in awarding 50% of the fees-on-fees requested because this ratio actually exceeded the percentage by which Schwarz prevailed on her request for merits fees.").

Plaintiffs seek **$44,983** in attorneys' fees for **110.8 hours** spent in connection with the fee motion. ECF No. 52-4, Exh. C. This is excessive.

A. The Court Should Reduce the Fees on Fees by Whatever Percentage Reduction it Applies to the Merits Based Fees.

It is well established that a district court can reduce a fees-on-fees request in proportion to the applicant's success on the underlying petition for merits based attorney's fees. *Thompson v. Gomez*, 45 F.3d 1365, 1366-68 (9th Cir. 1995); *see also Schwarz*, 73 F.3d at 909 ("[A] district court does not abuse its discretion by applying the same percentage of merits fees ultimately recovered to determine the proper amount of the fee-on-fees award."); *United States v. Biotronik, Inc*., 716 Fed App'x 590, 593 (9th Cir. 2017) (same). Moreover, the district court "can apply a percentage formula to reduce the fees-on-fees requested without providing an additional explanation for its actions, since it already has provided a concise but clear explanation of its reasons for the merits fee award." *Schwarz*, 73 F.3d at 909 (quotation marks omitted).

[13] Since Plaintiffs did not raise any of the remaining *Kerr* factors, they are not addressed here.

Following *Thompson* and *Schwarz*, district courts routinely reduce fees-on-fees awards by the same percentage it reduced the merits fee award. *Barnes v. AT&T Pension Benefit Plan - Nonbargained Program*, 963 F. Supp. 2d 950, 981-82 (N.D. Cal. 2013); *Hirsch v. Compton Unified Sch. Dist.*, No. CV 12-01269 RSWL (MRWx), 2013 U.S. Dist. LEXIS 64556, at *18-19 (C.D. Cal. May 3, 2013); *Inst. for Wildlife Prot. v. United States Fish & Wildlife Serv.*, No. 07-CV-358-PK, 2008 U.S. Dist. LEXIS 90995, at *8-9 (D.Or. Nov. 5, 2008).

Assuming the Court reduces Plaintiffs' request for $342,222 in merits based fees, whatever percentage of this amount the Court ultimately awards Plaintiffs should be similarly applied to the remaining fees-on-fees request.

B. In the Alternative, the Court Should Reduce the 110.8 hours Spent on the Fee Motion to 30 hours (an approximately 75% Reduction) because this Time is Excessive and Reviewing Time Records is not Compensable.

1. The time spent on the fee motion is excessive and duplicative.

The main problem with the fee motion is that Plaintiffs spent **110.8 hours**—the equivalent of a single attorney working on the motion eight hours a day, five days a week for nearly three weeks—on a straight-forward fee motion that contains very little legal analysis, and like most fee motions, simply "amounts to little more than documenting what a lawyer did and why he or she did it." *Brewster v. Dukakis*, 3 F.3d 488, 494 (1st Cir. 1993) (quotation marks omitted). Plaintiffs simply do not explain why it took so much time. *Cf.* ECF No. 52-4, ¶¶ 93-102 (detailing the time spent on the motion without explaining why it was necessary). *See, e.g.*, *Lial v. County of Stanislaus*, No. CV F 09-1039 LJO JLT, 2011 U.S. Dist. LEXIS 4435, at *23-24 (E.D. Cal. Jan. 11, 2011) (reducing fee motion hours from 50 to 8 where the moving party "provide[d] no information to explain [the attorney]'s devotion of more than 40 hours for this routine motion…. An associate could have easily prepared this attorney fees motion in eight hours.").

Accordingly, the Court should find, based on its own knowledge and experience that it should not have taken more than 30 hours to prepare the fee motion. *Toyota*, 2012

U.S. Dist. LEXIS 158417, at *23. This represents an approximately 75% reduction to the requested hours. *See, e.g., Wyant v. Allstate Indem. Co.*, No. C08-840 MJP, 2009 U.S. Dist. LEXIS 111663, at *7-8 (W.D.Wash. Nov. 18, 2009) (85 hours spent on fee motion was "excessive and extremely wasteful" and reducing time by 75% where the motion "was not detailed, novel, or remotely complex"); *Welch*, 480 F.3d at 950 (affirming reduction of hours spent on fees motion from 13 to 4).

This significant reduction is confirmed by the time entries provided by Plaintiffs, which highlight the duplication of work. For example:

- Frank Declaration: **three attorneys** billed **4.2 hours** ($1,422) drafting this simple three page declaration (ECF No. 52-7). ECF No. 52-10 at pp.28-29 (2/28/2020, Austin billed 1.0 hours; 4/20/2020 and 4/22/20, Barvir billed 1.20 hours; 4/21/2020, Frank billed 1.40 hours).
- Michel Declaration: **two attorneys** billed **3.2 hours** ($971) drafting the declaration (ECF No. 52-2). ECF No. 52-10 at p.28-30 (2/28/2020, Austin billed 1.8 hours; 4/20/2020 and 4/22/20, Barvir billed 1.40 hours). Yet, it was cut and pasted nearly verbatim from a declaration filed by Michel in a different case in 2017. Chapman Decl. Exh. G.
- Barvir Declaration: **two attorneys** spent **27.7 hours** ($11,520.00) drafting this declaration (ECF No. 52-4).[14] Yet, Frank (13.1 hours) and Barvir (14.6 hours) did exactly the same work. *Cf*. ECF No. 52-10 at p.29 (4/22/20, Frank billed 7.40 hours to "drafting [Barvir] declaration in support of attorneys' fee motion. This included reviewing billing slips and categorizing work contributions") *with id*. at p.30 (4/24/20, Barvir billed 4.80 hours to "review/revise" her declaration and "revise all paragraphs re … time spent by litigation team to ensure that all numbers cited match billing records and Exhibit C").[15]

[14] A chart listing all the time entries related to the Barvir Declaration is attached as Exhibit H to the Chapman Decl.

[15] Moreover, the bulk of the Barvir Declaration, paragraphs 14-102, simply summarizes the billing. This is work that should have been done by a paralegal or clerical staff, not by a partner billing at $475/hour. *See, e.g., Latta v. Otter*, No. 1:13-cv-00482-CWD, 2014 U.S. Dist. LEXIS 176103, at *26-28 (D.Idaho Dec. 19, 2014) (77 hours spent drafting fee motion was excessive since "reviewing billing records[] and preparing declarations … could be accomplished by clerical staff at a fraction of the cost," and "assembling" the documentation to support a fee motion "is not complex legal work. In fact, it barely qualifies as legal work.").

- Drafting the memorandum in support of the fee motion: **two attorneys** spent **45.5 hours** ($18,815) drafting the memorandum.[16] Yet, Frank (15 hours) and Barvir (30.5 hours) did exactly the same work. *Cf*. ECF No. 52-10 at p.29 (4/20/20, Frank billed 5.1 hours to "draft memorandum of points and authorities in support of fee motion") *with id*. (4/21/20, Barvir billed 7.6 hours to "draft Points & Authorities in Support of Plaintiffs' Motion for Attorneys' Fees").[17]

In sum, a detailed review of the time sheets more than justifies a roughly 75% reduction in hours (30 hours instead of 110.8) due to excessive and duplicative billing.

2. Reviewing time records is not compensable.

A 75% reduction in hours for the fee motion is further justified due to the extensive time Plaintiffs' counsel spent reviewing time records. *See*, *e.g*., ECF No. 52-10 at p.25 (1/23/2020, Barvir billed 3.60 hours to "review and analyze all attorney billing for the matter; assign reference numbers to each slip re phase of litigation; determine which slips are not part of a proper fee motion and should be written off"); *id*. at p.29 (4/7/2020, Barvir billed 1.20 hours to "analyze billing reports and HV chart of reasonable attorney's fees and overhead costs of matter"). In sum, Barvir billed **18.2 hours** and Frank billed **21 hours** (**39.2 total hours, $15,992**) to entries describing, at least in part, the review of time records. ECF No. 52-10 at pp.25, 28-30; Chapman Decl. Exh. J.

Counsel has a duty to ensure the accuracy of the fees requested. *See*, *e.g*., *Welch*, 480 F.3d at 948 ("The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked."). The Supreme Court has held that "[h]ours not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority." *Hensley*, 461 U.S. at 434 (quotation marks omitted). Accordingly, district courts routinely decline to award attorney's fees to counsel for time spent reviewing time records. *See*, *e.g*., *Caplan v. 101*

[16] A chart listing all the time entries related to drafting the memorandum is attached as Exhibit I to the Chapman Decl.

[17] Moreover, the memorandum is straight-forward and should not have taken much time to draft. Pages 4-6 merely contain the procedural background of the case. Pages 7-9 and 13-17 of the Motion simply repeat what is in the declarations. Plaintiffs should not be reimbursed twice for this work.

Vapor & Smoke, LLC, No. 1:18-cv-23049-KMM, 2019 U.S. Dist. LEXIS 142994, at *20 (S.D. Fla. Aug. 21, 2019) ("reviewing time records" is a "clerical task"); *Inst. for Wildlife Prot.*, 2008 U.S. Dist. LEXIS 90995, at *7-8 ("[C]lerical tasks such as reviewing time records … are not reimbursable as attorneys' fees…. It is unlikely that Plaintiff's counsel would bill his client for checking his own time records, and, therefore, the opposing party should not be charged for these costs.").

VII. CONCLUSION

This case was straight-forward; it involved two motions, there was no discovery, and it did not go to trial. There is no justification for **ten attorneys** (including four partners), a clerk, and a paralegal to work on this case. Accordingly, the City respectfully requests that the Court disallow billing for more than two attorneys on this matter.

The City also respectfully requests that the Court apply an 80% reduction to the time spent on motion practice (479.2 hours), settlement (111.7 hours), and trial preparation (75.6 hours) due to the excessive and duplicative billing described herein. Additionally, the Court should further reduce the lodestar by 43.3 hours for duplicative billing for intra-office meetings and communications, and it should also apply a 20% across-the-board deduction in hours because Plaintiffs' time sheets contain more than one hundred entries that are so redacted and vague it is impossible to discern the general subject matter of the task, let alone whether the time was reasonably expended.

The Court should deny Plaintiffs a 1.25 lodestar multiplier because there is nothing rare or exceptional about this case.

Finally, the Court should reduce the fees on fees request by the same percentage it reduces the merits fees, or alternatively, by approximately 75% to account for excessive and duplicative billing related specifically to the fee motion.

Dated: May 22, 2020

OFFICE OF THE CITY ATTORNEY OF LOS ANGELES

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