C. D. Michel – SBN 144258
Anna M. Barvir – SBN 268728
Sean A. Brady – SBN 262007
Tiffany D. Cheuvront – SBN 317144
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
cmichel@michellawyers.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NATIONAL RIFLE ASSOCIATION OF AMERICA; JOHN DOE,

Plaintiffs,

vs.

CITY OF LOS ANGELES; ERIC GARCETTI, in his official capacity as Mayor of City of Los Angeles; HOLLY L. WOLCOTT, in her official capacity as City Clerk of City of Los Angeles; and DOES 1-10,

Defendants.

Case No.: 2:19-cv-03212 SVW (GJSx)

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

Hearing Date: June 15, 2020
Hearing Time: 1:30 p.m.
Judge: Stephen V. Wilson
Courtroom: 10A

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The City fought tooth-and-nail to save an ordinance it had no business passing because it clearly stood in direct contravention of Plaintiffs' First Amendment rights. Plaintiffs' counsel secured a significant civil rights victory on behalf of a controversial client, and they have satisfied their burden under 42 U.S.C. § 1988 to prove that the fee award they now request is reasonable.

The burden thus shifted to the City to challenge Plaintiffs' overwhelming evidence of the reasonableness of their fees. The City, by and large, did not (and cannot) meet its burden to show that either the hours counsel expended or the hourly rates they seek are unreasonable. So instead, it creates, out of whole cloth, several bright-line rules against recovery for the work Plaintiffs' counsel performed. The authorities the City cites in support of its rules, however, are either distinguishable or mischaracterized or both. Aside from a handful of hours spent on clerical work that Plaintiffs mistakenly included, Plaintiffs are entitled to full recovery of the fees they request in their fee motion.

As explained below, the Court should reject the City's borderline frivolous request to cut Plaintiffs' counsels' fee request by a startling 80%.

ARGUMENT

I. PLAINTIFFS ESTABLISHED THAT THE HOURS SPENT LITIGATING THIS CASE WERE REASONABLE, AND THE CITY HAS NOT MET ITS BURDEN TO PROVE OTHERWISE

A. Plaintiffs' Counsel Did Not Overstaff the Case

The City claims that Plaintiffs' counsel necessarily overstaffed the case simply because they seek fee recovery for work performed by eight attorneys. *See* Opp'n Pls.' Mot. Attys.' Fees ("Opp'n"), at 3-4. Because of this "overstaffing," the City implores the Court to cut *all* hours except those billed by Ms. Barvir and Mr. Brady. But, without more, the bare number of attorneys that contribute to a case is a meaningless figure. "[A] district court need not consider how a differently structured firm might have staffed a case." *Salinas v. Rite Aid Lease Mgmt. Co.*, No. 10-cv-

7499, 2011 U.S. Dist. LEXIS 36093 (C.D. Cal. Mar. 17, 2011). What matters is whether the attorneys engaged in duplicative or excessive efforts. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Yet the City identifies no such work. Indeed, even a most cursory review of the number of hours billed by each timekeeper, as well as the role they played in litigating this matter, confirms that the City's argument lacks merit.

Almost ***80%*** of the total time billed to this case is attributable to just two senior attorneys (Barvir and Brady) and two junior associates (Cheuvront and Frank). Decl. Anna M. Barvir Supp. Pls.' Mot. Attys.' Fees ("Barvir Decl.") ¶ 18, Ex. C; Decl. Haydee Villegas Supp. Pls.' Mot. Attys.' Fees ("Villegas Decl.") Ex. A. Ms. Barvir, in her role as the "Responsible Attorney" and litigation team manager, "determined, directed, and advanced the strategy pursued by plaintiffs" through all phases of litigation, "supervised the legal analysis and writing performed," and "directed communications with plaintiffs and opposing counsel." Barvir Decl. ¶¶ 20, 23. With vital research and drafting support from Ms. Cheuvront, Ms. Barvir was responsible for the preparation and drafting of the complaint and successful motion for preliminary injunction, Barvir Decl. ¶¶ 47, 50, 57, 61. When Ms. Barvir experienced the loss of a family member, *see* Pls.' Emergency Ex Parte Appl., ECF No. 21, Mr. Brady stepped in to handle work related to responding to the City's motion to dismiss and opposition to Plaintiffs' preliminary injunction, Barvir Decl. ¶¶ 41, 49, 60; Brady Decl. ¶ 13. He stayed involved to assist Ms. Barvir with extensive settlement efforts and client communications, as the unusually shortened period to both negotiate settlement and prepare for trial demanded that these two senior attorneys share the load. Barvir Decl. ¶¶ 77, 88; Brady Decl. ¶¶ 15, 16.

Ms. Cheuvront, whose experience includes state- and local-level political advocacy, devoted the bulk of her time to building a case against the City by monitoring and engaging with the City to oppose the unconstitutional disclosure requirement from its introduction through its repeal. Suppl. Decl. Tiffany D.

Cheuvront Supp. Pls.' Mot. Attys.' Fees ("Suppl. Cheuvront Decl.") ¶¶ 2, 4, 5, 8; Cheuvront Decl. ¶ 12. She researched, compiled, and analyzed the legislative history, newspaper articles, social media postings, and other evidence necessary to prove the City's unlawful intent and secure Plaintiffs' victory. Suppl. Cheuvront Decl. ¶ 8; Cheuvront Decl. ¶ 12. And, as the attorney with the most intimate knowledge of the City's efforts at the time, she prepared early drafts of the complaint and motion for preliminary injunction and provided vital legal assistance to Ms. Barvir and Mr. Brady as they litigated the motions. Barvir Decl. ¶¶ 50, 61; Cheuvront Decl. ¶¶ 12, 13; Villegas Decl. Ex. A.

Mr. Frank handled discrete legal research and writing tasks not already handled by Ms. Cheuvront to aid Ms. Barvir and Mr. Brady during the motions phase. Barvir Decl. ¶¶ 51, 62; Frank Decl. ¶¶ 12-13; Villegas Decl. Ex. A. Eventually, as shown in Exhibit C, Ms. Cheuvront largely ceased work on this matter, and Mr. Frank took over as the primary junior-level associate assigned to the case. *See* Barvir Decl. Ex. C (showing that Ms. Cheuvront spent about 92% of her hours during the first two phases of litigation). In that role, Mr. Frank handled, among other things, discrete legal research and drafting related to settlement, trial preparation, and this fee motion and reply. Barvir Decl. ¶¶ 62, 79, 90, Ex. C; Frank Decl. ¶¶ 13-15; Villegas Decl. Ex. A.

In short, Ms. Cheuvront and Mr. Frank were heavily involved with, *and made meaningful contributions to*, this case. Without their efforts, necessary case-building, evidence compilation, and legal research and writing would not have been possible. And Plaintiffs' success might not have been assured. Alternatively, Ms. Barvir or Mr. Brady—*billing at much higher rates*—would have handled those litigation tasks. This makes the City's request to cut time for all attorneys except Ms. Barvir and Mr. Brady particularly unreasonable.

Additionally, the involvement of the other four attorneys was minimal. For instance, the contributions of Senior Partner C. D. Michel—billing just 26.7 hours to

this matter—were largely limited to essential supervision and support of his legal team, providing advice based on his 30+ years of civil rights litigation experience, and handling client-facing communications. Barvir Decl. ¶¶ 48, 75, 86; Decl. of C. D. Michel Supp. Pls.' Mot. Attys.' Fees ("Michel Decl.") ¶¶ 24-25, 28, 29. Managing Partner Joshua R. Dale's work (11.1 hours) generally including providing "invaluable experience-based advice on litigation [and settlement] strategies and the like"—often, when Mr. Michel was unavailable to provide that support. Barvir Decl. ¶¶ 25, 40; Decl. of Joshua R. Dale Supp. Pls.' Mot. Attys.' Fees ("Dale Decl.") ¶¶ 17, 19, 20.[1] According to Responsible Attorney Barvir, though Mr. Dale's contributions were limited, they "were vital to Plaintiffs' success in this matter." Barvir Decl. ¶ 25.

As for Associate Moros and Staff Attorney Khundkar—who, together billed just 40.2 hours—their work was strictly limited to tasks, like discrete legal research and writing, best performed by junior attorneys at their lower billing rates. Barvir Decl. ¶¶ 52, 63, 80, 91; Decl. Konstadinos T. Moros Supp. Pls.' Mot. Attys.' Fees ("Moros Decl.") ¶¶ 10-12; Villegas Decl. Ex. A. There is no evidence that other attorneys had done that same work, and the City points to none.[2]

In short, the City asks the Court to apply a 100% reduction of all hours not billed by Ms. Barvir or Mr. Brady. The City's request stems from nothing but its unsupported claim that Plaintiffs' counsel inherently overstaffed this case. Yet beyond simply alleging that Plaintiffs relied on too many attorneys, the City points

[1] He also spent a limited amount of time engaged in legal research and analysis necessary to providing sound advice and support. Barvir Decl. ¶ 76; Dale Decl. ¶ 19.

[2] Even if one assumes the City's failure to point to any actual duplication of effort by junior-level associates is, at least partially, related to the necessary redaction of details about their legal research, it is inappropriate to impose a 100% reduction of those attorneys' work and then *also* impose a 20% reduction to the remainder based on the redaction of those same slips. *Compare* Opp'n 3-13, *with Cabrales v. Cnty. of Los Angeles*, 864 F.2d 1454, 1465 (9th Cir. 1988) ("Mathematically, it is inconsequential whether the lodestar figure itself is adjusted for lack of success or whether the reasonable hours component of the lodestar is adjusted for lack of success. What matters is that the district court did not 'count' for lack of success *twice*." (emphasis added).)

to nothing showing that any of the work done by Plaintiffs' attorneys was actually duplicative. While Plaintiffs' evidence reveals that, instead, each attorney had a unique role, engaged in distinct tasks, and were called on to assist at different phases of the litigation and for different reasons. The Court should reject the City's request to limit Plaintiffs' fee recovery to only that work performed by Ms. Barvir and Mr. Brady.

B. Plaintiffs' Motion Practice Was Necessary and Not Duplicative

Plaintiffs' lead counsel is not inexperienced. Counsel possesses the judgment to accurately assess the effort necessary to prevail in a nuanced, high-profile, First Amendment civil rights case. Plaintiffs' counsel's success here reveals the judiciousness of their efforts and judgment. And barring undeniable evidence of the lack of such judgment, courts should not resort to Monday-morning quarterbacking when assessing successful counsel's judgment in this regard. "By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Disregarding this guidance, the City invites the Court to cut Plaintiffs' counsel's motion practice hours by an astounding 80%. Opp'n 5 (citing *Bobrick Washroom Equip., Inc. v. Am. Spec., Inc.*, No. 10-cv-6938, 2013 U.S. Dist. LEXIS 198593 (C.D. Cal. Feb. 20, 2013)). Baldly claiming that Plaintiffs' (successful) efforts in bringing Plaintiffs' Motion for Preliminary Injunction and opposing the City's Motion to Dismiss were excessive and unnecessary, the City essentially asks the Court to reject this well-established principle. The Court should instead reject the City's invitation.

Indeed, the City's reliance on this Court's decision in *Bobrick* misses the mark. First, *Bobrick* appears to be quite an outlier in terms of the size of the necessary deduction of hours. But, more importantly, the Court only reached such a drastic cut in a few subcategories of those attorneys' billings and did not do so in one

fell swoop. 2013 U.S. Dist. LEXIS 198593 at *22-23. Instead, the Court arrived at an 80% total deduction, after cutting 30% for block-billing, another 10% for evident failure to exercise proper billing judgment, and another 40% for vagueness, excessiveness, and entries that appeared unrelated to the objective they claimed the entries related to. *Id.* The City does not claim that Plaintiffs' counsel has engaged in block-billing or that they failed to generally exercise billing judgment. Indeed, the only *Bobrick* factors the City even attempts to establish are vagueness of entries and excessiveness of hours. Opp'n at 4, 14. And those arguments do not rely on any basis strong enough to overcome the deference due to Plaintiffs' counsel's judgment. *See Moreno*, 534 F.3d at 1112.

First, as for vagueness, Plaintiffs' detailed declarations of every billing professional attesting to the work each reasonably performed on this case, as well as 31 pages of billing records, are the best evidence that Plaintiffs' billing is not vague enough to justify any reduction of hours—let alone a reduction as stark as 80%. The City's unsupported and conclusory mischaracterizations of Plaintiffs' evidence are not evidence that Plaintiffs' billing entries are vague, and the Court should give them no weight.

Second, as for excessiveness of time spent, the City essentially argues that the time Plaintiffs' counsel devoted to litigating Plaintiffs' Motion for Preliminary Injunction and opposing the City's Motion to Dismiss was per se excessive. Opp'n 5-6, 8. But the City relies on no authority from any First Amendment civil rights fee matters, or scant authority otherwise, supporting its claim. It also fails to rebut *Moreno*'s guidance that courts should not unduly scrutinize Plaintiffs' counsel's judgment about how much work it reasonably took to secure their victory. 534 F.3d at 1112. That said, Plaintiffs respond to the City's specific criticisms about the preliminary injunction and motion to dismiss in turn.

Plaintiffs' Motion for Preliminary Injunction: The City contends that Plaintiffs' Motion for Preliminary Injunction is, or at least should have been, a

simple "copy-and-paste" of Plaintiffs' complaint. Opp'n 5-6. For that reason, the City argues, the time billed to it was necessarily duplicative and the Court should thus cut it dramatically. *Id.* The City's contention here is that Plaintiffs' (ultimately dispositive) motion represents little more than the recycling of already existing content from the complaint. *Id.* at 8. Aside from amounting to an argument that Plaintiffs would have been better served had their counsel committed malpractice, the City's contention is demonstrably false.

The City provides seven bullet-points, comparing content from both the complaint and the motion. Opp'n 6. Setting aside content from the statement of facts and some exhibits, the City's bullet-points suggest there is no difference between pairs of conclusory charging paragraphs from a complaint and corresponding *pages of persuasive legal reasoning and application of law to fact.* For example, the second bullet-point identifies 10 lines from the complaint and somehow equates those lines to *four whole pages* of analysis in Plaintiffs' motion. *Id.* The City's third bullet-point equates two complaint paragraphs to *two pages* of motion content. *Id*. The City's fourth bullet-point equates two paragraphs to *more than three pages* of motion content. *Id*. And the fifth and sixth turn three complaint paragraphs into *three pages* from the motion. *Id.*

To be sure, Plaintiffs' motion for preliminary injunction would be expected to address the same general legal theories Plaintiffs raise in their complaint. The standard for a preliminary injunction requires Plaintiffs to prove they are likely to succeed on the merits of their claims, after all. *See Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). But drilling down into the theories introduced in a complaint and developing them in a persuasive and analytical memorandum is just not the same as presenting what essentially amounts to the outline of one's case in a complaint. Indeed, anyone who has ever drafted a clear and concise legal memorandum—especially in a high-profile civil rights lawsuit—knows that significant effort goes into converting a complaint into a

potentially dispositive motion. The City's contention that "it is not clear that any independent work" went into this motion is simply untrue. Opp'n 6. Frankly, it is hard to believe the City makes this argument in good faith.

Plaintiffs' Opposition to Defendants' Motion to Dismiss: As for Plaintiffs' work opposing the City's motion to dismiss, the City again suggests that copy-and-paste was the proper way to approach the City's potentially dispositive motion. Opp'n 8. Admittedly, some work product created for the preliminary injunction motion appeared in Plaintiffs' opposition to the City's motion to dismiss. *Id.* at 9. But there was still plenty left to research, draft, revise, and polish into a final product. The City seems to argue that any recycling of content makes the overall expenditure of time here (about 80 hours), unreasonable per se. But there is no authority for that claim.

The City also conjecturally argues—based on its own interpretation of Plaintiffs' billing entries—that Plaintiffs' counsel duplicated the "exact same work." *Id.* at 9. But just because multiple attorneys may have billed for "research" related to the same motion does *not* prove that they researched the same issues. Even if they did, sometimes that is necessary because legal research can be complicated and does not always yield conclusive, satisfying results. It may take more than one attorney to consider the same question until confidence in the results is realized. That is where billing judgment applies—and Plaintiffs' counsel, exercising such judgment and voluntarily waiving hundreds of hours, already accounted for such potential duplication of efforts. Barvir Decl. Ex. C.

* * * *

Plaintiffs' counsel spurns its defeated opponent's demand that they substitute conclusory complaint allegations for finessed legal drafting and careful analysis. Such fly-by-night drafting would hardly meet the standards of a 1L legal writing class, let alone secure a constitutional win, in federal court, on behalf of a controversial client. What's more, Plaintiffs reject the notion that any reduction is

appropriate here because their successful motion practice prompted the repeal of the ordinance, secured settlement, and avoided trial—conserving the resources of all the parties and this Court.

C. Settlement Was Unusually Time-consuming but It Was Reasonable

The City's only argument for why the time Plaintiffs devoted to settlement is excessive, and should be reduced by 80%, is that drafting of the "straight-forward" joint settlement stipulation is the *only* portion of work that is compensable. Opp'n 10. To begin with, the City's argument fails because that "straight-forward" stipulation would not have been possible but for the many hours Plaintiffs' counsel spent helping its client navigate its options and negotiating with the City, among other things. That work was reasonably necessary when it was performed, and it is fully recoverable.

But, more importantly, the City's cavalier philosophy of what constitutes plaintiff-side civil rights advocacy is not the appropriate barometer for assessing the reasonable expenditure of Plaintiffs' counsel's time. Settlement here was not straightforward. Plaintiffs' counsel needed to fully understand many different scenarios to advise their clients of the likely consequences of pursuing different objectives and the various strategies to achieve them. Barvir Decl. ¶ 74. This required a lot of legal research, analysis, and written and oral correspondence with the client—perhaps an unusual amount. *See* Barvir Decl. ¶ 74; Brady Decl. ¶ 15; Frank ¶ 14; Michel ¶ 28; Moros Decl. ¶ 10. But the fact that some might consider the number of hours to have been unusual does not make them *unreasonably excessive*.

Further, that the City claims it can only discern 26 distinct billing entries that relate to settlement, by itself, means nothing. Opp'n 11. Plaintiffs' counsel submitted detailed descriptions through sworn declarations of their contributions to settlement. Those declarations were drafted after reviewing all the billing entries, grouping the entries by project, and determining the number of hours spent on each project *as reflected in those entries*. Suppl. Barvir Decl. ¶¶ 2-4. Based on that effort, and his

own recollections, Mr. Frank declares that he spent roughly 11 hours researching the impact of different contingencies on settlement negotiations. Frank Decl. ¶ 14; Villegas Decl. Ex. A. Similarly, Mr. Moros declares that he performed about 12 hours of distinct legal research to answer client questions directly related to navigating the settlement negotiations. Moros Decl. ¶ 10; Villegas Decl. Ex. A. Mr. Brady devoted over 40 hours to necessary settlement-related activity, including correspondence, research, and analysis—all of which is described in clear detail in his declaration and billing records. Brady Decl. ¶ 15; Villegas Decl. Ex. A.[3]

Finally, even if one could fairly characterize Plaintiffs' settlement efforts as excessive, the City's request for an 80% reduction is not justified because, again, the City does not even claim Plaintiffs engaged in block-billing or failed to exercise billing judgment. *See Bobrick*, 2013 U.S. Dist. LEXIS 198593 at *22-23.

D. Trial Preparation Efforts Were Necessary and Fully Compensable

The City faults Plaintiffs' counsel for engaging in trial preparation efforts even though the City had communicated that it intended to repeal the law. Opp'n 11. But Plaintiffs' counsel engaged in trial preparation because they were exercising due diligence under the circumstances as they existed when the work was done. Although, it seemed repeal of the ordinance was likely based on the City Attorney's assurances, settlement was not guaranteed, and Plaintiffs' counsel was not a position to count either chick until it had hatched. Plaintiffs thus had no real choice but to prepare for trial and draft key documents for the contingency of repeal or settlement falling through. Indeed, failure to have done the work would have likely amounted to malpractice—a reality it seems the City's own attorneys *also* understood, considering that they too prepared and filed the required pretrial documents at issue. *See* Def.'s Exhibit List, Jan. 21, 2020, ECF No. 39; Def.'s Mem. Contentions of Fact & Law, Jan. 21, 2020, ECF No. 41; Def.'s Witness List, Jan. 21, 2020, ECF. No. 42.

[3] If, however, the Court requires more detail, Plaintiffs would be willing submit less redacted billing records for *in camera* review.

To argue that such due diligence amounts to poor professional judgment is as unpersuasive as it is unwholesome. Opp'n 11.

Moreover, *Sierra Club v. McCarthy*, 235 F. Supp. 3d 63 (D.D.C. 2017), a case the City cites elsewhere to make an unrelated point, Opp'n 16, confirms the reasonability of, and the basis for recovering fees for, Plaintiffs' trial preparation efforts. There, the court "recognize[d] that it may be reasonable and necessary to draft a motion where a deadline is pressing, even if settlement negotiations ultimately render the motion unnecessary." *Id.* at 69. When they performed the work, Plaintiffs' counsel reasonably perceived that repeal or settlement might fall through and that the Court might rebuff a last-minute extension to prepare key trial documents that counsel was on notice were due. And, in fact, the parties did not reach a settlement, even in principle, until *after* the first round of pretrial filings was due. Thus, Plaintiffs' counsel, like the City's, reasonably prepared and filed those documents, and full compensation for the time they spent doing so is appropriate.[4]

E. Intraoffice Communications and Meetings Are Compensable

The City essentially argues that intraoffice communications, including meetings, are per se non-compensable activities. Opp'n 13. The City claims that only one attorney may recover for meeting time, and all other attorneys who participated may not. The City cites three authorities for this argument: *Welch v. Metro. Life Insurance Co.*, 480 F.3d 942 (9th Cir. 2007), *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970 (S.D. Cal. 2014), and *United States v. One 2008 Toyota Rav 4 Sports Util. Vehicle*, No. 09-cv-05672, 2012 U.S. Dist. LEXIS 158417 (C.D. Cal. Oct. 18, 2012). Not one of these authorities, however, supports the City's broad and bright-line rule against recovery for intraoffice meetings.

In *Welch*, the court concededly did cut intraoffice meeting time, allowing only

[4] The City's vague criticisms of how long Plaintiffs' counsel spent drafting key pretrial documents, such as the exhibit list and memorandum of contentions of fact and law, are speculative and unsupported. Opp'n 11-12. Such conjectural arguments about how long a task *should* have taken have no weight.

the senior attorney to recover for it. 480 F.3d at 949. But there, the court reasoned that the senior attorney clearly did not need the junior attorney's assistance and had not otherwise justified involving her colleague. *Id*. The fee denial was *not* based on the operation of a firm rule against multiple attorneys recovering for the same meeting, but a judgment that the second attorney's involvement was unjustified given the qualifications of the lead attorney and how uncomplicated the matter was. The court also noted pervasive block-billing and billing in quarter-hour increments. *Id*. These reasons do not apply here.

This case involved novel First Amendment questions, and it was not uncomplicated. Lead counsel regularly involved junior attorneys on necessary legal research and writing projects that are usually best performed by junior attorneys at their lower billing rates, but also require a level of partnership with senior attorneys to be accomplished efficiently. Suppl. Barvir Decl. ¶¶ 7-8. What's more, the collaboration between Ms. Barvir and Mr. Brady throughout January was necessary because, under the unusually abbreviated timeline, Ms. Barvir could not reasonably handle both trial preparation and settlement efforts on her own in less than two months. *Id.* ¶ 9. Meeting with Mr. Brady to discuss shifting litigation strategies and settlement goals was thus necessary to the successful handling of this lawsuit. *Id.*

In *Carr*, the court was clear that it cut intraoffice meeting time due to evidence that such entries "are the result of overstaffing or inflationary billing practices." 51 F. Supp. 3d at 982-83. The court noted pervasive evidence of these practices, such as "billing separately for each email sent or received on the matter," and "6 minute intraoffice meetings concerning 'strategy' or 'status'," which "seem more likely to be informal conversations rather than *meetings for which billing is appropriate*." *Id.* at 982 (emphasis added).

Plaintiffs' counsel's records do not reflect these sorts of billing practices. Villegas Decl. Ex. A. They almost uniformly show meetings of meaningful duration where important communications occur, which attorneys properly bill to their clients

and are compensable for fee recovery purposes. *See, e.g.*, Villegas Decl. Ex. A, at 20-27.

The only case that arguably supports the City's argument is *Toyota*, where this Court held that "*[n]ormally* when 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." 2012 U.S. Dist. LEXIS 158417, *24 (C.D. Cal. Oct. 18, 2012) (emphasis added; internal quotation marks omitted). "Normally" suggests that, in some cases, this principle does not apply. So, taken together, the cases the City cites establish that intraoffice meetings, when untainted by questionable billing practices and genuinely chargeable to a client, *are* recoverable. This is that case, and fees for more than just one attorney's time should be recovered.

F. Paralegal Palmerin's Non-Clerical Work Is Recoverable

The City challenges *all* of counsel's paralegal's contributions to this case (roughly 31.5 hours). Opp'n 14. Its argument that recovery for her work should be denied outright relies on *Toyota* and *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009). But the authority that *Nadarajah* relies on for this premise, *Davis v. City of San Francisco*, 976 F.2d 1536 (9th Cir. 1992), does not support the City's bright-line rule. *Davis* merely holds that a *lawyer* cannot recover a *lawyer's rate* for clerical work the lawyer performs. 976 F.2d at 1543.

The distinction that does matter, however, is between *clerical* and *paralegal* work. Generally, paralegal work is recoverable while clerical or administrative work is not. *See Missouri v. Jenkins*, 491 U.S. 274, 285 (1989). Upon a detailed reconsideration of Ms. Palmerin's declaration and billing slips, Plaintiffs acknowledge that there are a handful of entries that are fairly characterizable as non-compensable clerical work. But these entries total about 6.0 hours (0.5 hour in paragraph 7; 2.6 hours and 0.4 hour in paragraph 9; an undiscernible fraction in paragraph 11; 0.5 hour in paragraph 12; and 1.8 hours in paragraph 13). *See* Decl. Laura Palmerin Supp. Pls.' Mot. Attys.' Fees ("Palmerin Decl.") ¶¶ 7, 9, 11-13. The

remaining 25.5 hours are compensable paralegal work that is appropriately billed at her reasonable $170 hourly rate.

G. The Fees Incurred for Work on the Fee Motion Are Reasonable

The City's request to cut Plaintiffs' hours on this motion by 75% is unreasonable. This fee motion involved reviewing hundreds of pages of billing records, Barvir Decl. ¶¶ 18-19, 34, Suppl. Barvir Decl. ¶¶ 2-4, 6—accounting for over 1,700 hours of attorney time, *id.* Ex. C—to satisfy counsel's affirmative obligation to practice billing judgment. *See, e.g., Common Cause v. Jones*, 235 F. Supp. 2d 1076, 1080 (C.D. Cal. 2002). It involved drafting nine declarations, including Ms. Barvir's comprehensive 29-page declaration. Barvir Decl. ¶¶ 93-102; Frank Decl. ¶ 16; Villegas Decl. Ex. A, at 29-31. It involved performing due diligence to ensure that counsel's records were accurately presented to the Court and correctly characterized in all exhibits and declarations. Barvir Decl. ¶ 94; Frank Decl. ¶ 16; Villegas Decl. Ex. A; Suppl. Barvir Decl. ¶¶ 2-4, 6. It involved analyzing billing entries to determine whether to redact, and how much. Suppl. Barvir Decl. ¶ 5; Villegas Decl. Ex. A. It involved legal research and analysis of several key Ninth Circuit fee recovery authorities. Barvir Decl. ¶ 94; Frank Decl. ¶ 16; Villegas Decl. Ex. A, at 30-31. And of course, it involved drafting a motion to the standard that Plaintiffs' counsel's clients expect.[5] This is all detail-oriented, judgment-intensive work that simply cannot be delegated to support staff or generated perfunctorily. Nor could it be sufficiently executed in 30 hours, as the City contends. Opp'n 22.

Far from over-billing on this motion, counsel exercised good billing judgment. *See In re Livolsi*, No. 10-07683-PB13, 2012 Bankr. LEXIS 2327 (Bankr. S.D. Cal. May 14, 2012) ("[B]illing judgment [should be exercised] in both what work is undertaken and whether the work calls for the skill of a high-billing attorney or

[5] This does not even account for the time spent drafting this reply, which itself has involved many hours researching, analyzing, drafting, editing, revising, strategizing, and preparing for submission—time Plaintiffs do not even seek to recover.

whether it can be competently done by a relatively less-experienced attorney billing at a lower hourly rate.") Ms. Barvir assigned the initial declaration drafting to a law clerk at a much lower rate than even the most junior associate would bill. Villegas Decl. Ex. A, at 28. She did not enlist Partner Brady, Managing Partner Dale, or Senior Partner Michel (at their much higher billing rates) for anything but the review and approval of their declarations. Barvir Decl. ¶¶ 95-97. Instead, her primary support was Mr. Frank, a junior-level associate, billing at a reasonable rate. Barvir Decl. ¶ 99; Frank Decl. ¶ 16; Villegas Decl. Ex. A, at 28-31.

Beyond its general accusations that Plaintiffs' counsel spent too much time preparing their fee motion, the City argues that time spent reviewing and preparing Plaintiffs' billing records was unnecessary and unrecoverable. Opp'n 24-5 (citing *Caplan v. 101 Vapor & Smoke, Ltd. Liab. Co.*, No. 18-cv-23049, 2019 U.S. Dist. LEXIS 142994 (S.D. Fla. Aug. 21, 2019); *Inst. for Wildlife Prot. v. U.S. Fish & Wildlife Serv.*, No. 07-cv-358, 2008 U.S. Dist. LEXIS 90995 (D. Or. Nov. 5, 2008)). But it is illogical that Plaintiffs' counsel was both under an obligation to perform billing judgment but simultaneously cannot review their billing records. Indeed, it is impossible to determine whether compensation should be sought for work described in a billing record without reviewing the billing record. This is not "clerical" work. It is work an attorney must do to bring a proper fee motion. For counsel has a duty to ensure the accuracy of fees requested. *Hensley*, 461 U.S. at 433 (1983) (holding that the fee applicant bears the burden of submitting "evidence supporting the hours worked and rates claimed").

Neither case the City relies on for its bright-line rule against fee recovery for analysis of billing records provides any meaningful guidance or context for understanding their seemingly aberrant conclusions. In *Caplan*, the context of the hurried evaluation was not even fees-on-fees. 2019 U.S. Dist. LEXIS 142994 at *21. There was no discussion of whether reviewing billing records in the context of preparing a fee motion is compensable. Similarly, the *Wildlife* court hardly offered

any clear analysis in reaching its conclusion that the fees were non-compensable. *Wildlife*, 2008 U.S. Dist. LEXIS 90995 at *7-8. These non-binding, out-of-district authorities simply do not control this question.

For these reasons, the Court should fully compensate Plaintiffs for the fees incurred bringing the motion.[6]

H. The Fees Incurred for Work on Miscellaneous Short-term Projects Are Recoverable

The City raises three more points in this section of its opposition, which Plaintiffs respond to in turn. Opp'n 16.

First, the City seeks to deduct the (minimal) time spent preparing the report required under rule 26(f) of the Federal Rules of Civil Procedure because that document was never filed. Opp'n 16. But, when they began to work up the document, Plaintiffs' counsel had no reason to believe this case would bypass the Rule 26(f) filing requirement that has applied to every other federal matter they have litigated. So even though Plaintiffs' abandoned the filing because of the course litigation ultimately took, having a clerk do one hour of work on it was reasonable and is therefore compensable at the modest clerk rate. Again, hindsight is 20/20. Counsel is entitled to compensation for work it that is reasonably necessary when it is performed, even if settlement or some other event later renders that task unnecessary. *See Sierra Club*, 235 F. Supp. 3d at 69.

Second, the City argues that hours devoted to Plaintiffs' ex parte motion to continue the motion to dismiss (due to Ms. Barvir's family emergency) are not recoverable because the City ultimately offered to stipulate to the requested relief. Opp'n 16. Aside from the fact that the City did not initially agree to the extension Plaintiffs needed, the timing of Ms. Barvir's emergency and the local rules required that Plaintiffs file an ex parte motion instead of the simpler stipulation. Suppl. Decl. Sean A. Brady Supp. Pls.' Mot. Attys.' Fees ("Suppl. Brady Decl.") ¶ 7. So even

[6] Plaintiffs do not seek to apply a multiplier to work done on this motion.

though the City ultimately did not oppose the extension, the work that Plaintiffs' counsel had to do to file for and obtain the relief from this Court was still necessary and reasonable. Suppl. Brady Decl. ¶¶ 2-8. The City cites no authority explaining that this time is not recoverable.

Third, the City asks the Court to deduct all hours for work done in anticipation of the City filing supplemental preliminary injunction material to which Plaintiffs would have to respond. Opp'n 16. But it was reasonable for Plaintiffs to preemptively prepare a motion for leave to file a reply to the City's anticipated supplemental material. For Plaintiffs would have needed to file such motion within hours of the City's filing. At the end of the day, Plaintiffs' counsel was indeed surprised that the City did not accept the Court's invitation to supplement its arguments, and given the motion's outcome, maybe the City should have. Because Plaintiffs' counsel's judgment was reasonable under the circumstances, and because courts "recognize that it may be reasonable and necessary to draft a motion where a deadline is pressing, even if settlement negotiations [or another contingency] ultimately render the motion unnecessary," *Sierra Club*, 235 F. Supp. 3d at 69, recovery for this work is proper.

For these reasons, the City's arguments that Plaintiffs should not recover fees for work reasonably done on these miscellaneous short-term projects are unpersuasive. The Court should not deduct these hours and should, instead, fully compensate Plaintiffs for the fees they incurred.

II. PLAINTIFFS' COUNSEL ADEQUATELY DOCUMENTED THE TIME SPENT AND THE REDACTION OF THEIR BILLS DOES NOT PREVENT THE COURT FROM DETERMINING THE REASONABLENESS OF PLAINTIFFS' FEE REQUEST

The City is asking for a 20% reduction for 100 entries that it claims are too redacted to assess what work the entries describe. Opp'n 16. Plaintiffs acknowledge that many of their billing entries are redacted to preserve confidentiality. But the authorities the City relies on to support a 20% reduction for redaction alone do not support the City's position. For example, in *Signature Networks, Inc. v. Estefan*, No.

03-cv-4796, 2005 U.S. Dist. LEXIS 49124, *22 (N.D. Cal. May 25, 2005), the court applied a 20% reduction for *both* block-billing *and* extensive redaction. Here, even assuming Plaintiffs' overly redacted their bills, the City makes *no* allegation of block-billing, so adopting the full 20% reduction that *Signature Networks* applied would be inappropriate here.

What's more, "courts *regularly* include hours in the lodestar calculation where the billing entry is only partially redacted and it can be discerned from the unredacted portion of the entry that billing for the time is reasonable, or where the proponent of the fee request has submitted the records to be reviewed *in camera*." *Mitchell v. Chavez*, No. 13-cv-01324, 2018 U.S. Dist. LEXIS 109386, at *22-23 (E.D. Cal. June 29, 2018) (emphasis added) (citing *Democratic Party of Wash. v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) (noting a court need not reject redacted time entries where the "redactions do not impair the ability of the court to judge whether the work was an appropriate basis for fees")).

Plaintiffs reject the contention that their redacted records prevent the City or the Court from understanding what the entries reflect. As the *Mitchell* court reasoned, entries that provide *no* information are problematic, but if there is enough, then the bar is met. 2018 U.S. Dist. LEXIS 109386 at *23. Plaintiffs meet that bar. For the most part, their billing entries describe with reasonable particularity the projects they were working on and why. While some entries might appear heavily redacted, that merely reflects the fact that Plaintiffs' counsel provides its client with extremely detailed billing records that explain the exact scope and content of litigation meetings and legal research. Suppl. Barvir Decl. ¶ 6. Failure to redact such information would divulge attorney-client communications and work product. *Id.*

That said, if the Court agrees that Plaintiffs redacted some entries in a way that prevents the Court from assessing the reasonability of the work they reference, Plaintiffs are willing to submit unredacted or less redacted entries for *in camera* review.

III. PLAINTIFFS ESTABLISHED THAT ITS ATTORNEYS' HOURLY RATES ARE REASONABLE, AND THE CITY FAILS TO MEET ITS BURDEN TO PROVE THE REASONABLENESS OF ANY ATTORNEY'S RATE

The City challenges rates for only three attorneys: Ms. Cheuvront, Mr. Khundkar, and Mr. Moros. Opp'n 16-18. Plaintiffs discuss each in turn.

Tiffany D. Cheuvront: It is hard to characterize the City's argument that $100 is the appropriate hourly rate for Ms. Cheuvront, a third-year associate, as anything but frivolous. Indeed, courts in this district (including this Court) routinely award far more for *paralegal* hours than what the City contends is appropriate for Ms. Cheuvront's *attorney* work. *See, e.g.*, *Jones v. Corbis Corp.*, No. 10-cv-8668, 2011 U.S. Dist. LEXIS 109820 (C.D. Cal. Aug. 24, 2011) (approving $125 per hour for paralegal work even without an effort by the fee applicant to justify more); *Rosebrock v. Beiter*, No. 10-cv-01878, 2015 U.S. Dist. LEXIS 193901 (C.D. Cal. Aug. 13, 2015) (noting that courts in this district have awarded fees for paralegal services at hourly rates between $125 and $270); *Stewart v. San Luis Ambulance*, No. 13-cv-09458, 2016 U.S. Dist. LEXIS 195372 (C.D. Cal. Jan. 7, 2016) (approving $175 hourly paralegal rate).

To be clear, Ms. Cheuvront has practiced civil rights law at Michel & Associates since she first became eligible to practice law in California. Suppl. Cheuvront Decl. ¶¶ 2-5. She also brings substantial relevant experience to bear from her earlier career as a lobbyist and legislative analyst working on behalf of nonprofit organizations. *Id.* Further, the City's contention that she has not "previously worked on a civil-rights or First Amendment case" is simply false. Opp'n 17. Ms. Cheuvront has contributed to several civil rights matters since joining Michel & Associates as a practicing attorney, including one specifically involving First Amendment issues quite similar to those raised here. Suppl. Cheuvront Decl. ¶¶ 6-7 (discussing her role in *B & L Prods. v. 22nd Dist. Agric. Ass'n*, 394 F. Supp. 3d 1226 (S.D. Cal. 2019)). For these reasons, and those laid out in Plaintiffs' moving papers, Ms. Cheuvront's $325 hourly rate is imminently reasonable. Pls.' Mem. Supp. Mot. Attys.' Fees

("Mot.") 11, 15-16.

Konstadinos T. Moros: Mr. Moros' involvement in the matter was limited to researching discrete questions about the effect of pursuing various strategies during settlement. Although his legal experience before joining Michel & Associates did not involve civil rights, neither did the scope of his contributions to this matter (which took only 14 hours). Moros Decl. ¶¶ 10-12. It is thus unfair to assess his contributions through a civil rights lens. The proper lens is that of a four- to five-year civil litigation attorney practicing in the greater Los Angeles area. Mot. 11, 15-16. Plaintiffs have amply documented that his rate is within the acceptable range for attorneys of his experience level in that field. *Id.*

Imran H. Khundkar: Mr. Khundkar's contributions to the matter were similarly modest, accounting for about 26 hours, mostly in motion practice. Because Mr. Khundkar moved on to another firm before this matter's conclusion, he was unavailable to execute a declaration in support of Plaintiffs' fee request here. Barvir Decl. ¶ 30; Suppl. Barvir Decl. ¶ 11. But Mr. Khundkar began his legal career at Michel & Associates, even before his bar admission in December 2017, and he possessed roughly two years of civil rights litigation experience by the time he contributed to this matter. Suppl. Barvir Decl. ¶ 10. His billing rate of $300 per hour is within the range of similarly experienced junior attorneys in civil rights and general civil litigation in the Los Angeles area. The Court would not abuse its discretion in finding $300 per hour reasonable. Mot. 11, 15-16.

IV. A 1.25 MULTIPLIER FOR WORK ON THE MERITS IS JUSTIFIED

Plaintiffs acknowledge that upward multipliers are rare. That said, the City does not effectively rebut Plaintiffs' argument for why the Court is justified in applying one in *this* case.

First, as Plaintiffs detailed in their moving papers, the "results obtained" factor stands out here and is not adequately represented in the lodestar Plaintiffs' present to the Court. Mot. 18-19. The City makes no persuasive argument otherwise, and

Plaintiffs will not belabor the point any further here.

Second, Plaintiffs reject the notion that the longstanding relationship between Michel & Associates and Plaintiff NRA does not affect the desirability of the case or pose reputational considerations for the attorneys who make a public record of their services on its behalf. The authority that the City cites to make its point that longstanding representation of unpopular clients contradicts the weight of the undesirability factor also noted that those attorneys "buil[t] into their fee schedule a factor for undesirability." *Amico v. New Castle Cty*., 654 F. Supp. 982, 1002-03 (D. Del. 1987). This factor might plausibly make the argument for a multiplier less colorable because the undesirability has already been amortized into the representation fees. But that is not the case here. There is no evidence that Michel & Associates upcharges the NRA in this way. Indeed, the rates the firm asks to be compensated at in this very motion are in line with, or lower than, rates for general civil rights litigation regardless of the reputation of the client. *See* Mot. 11-12.

Third, the authorities that the City claims support its argument that there was no unusual time limitation in this case are easily distinguishable. Indeed, none of the arguments the plaintiffs advanced in the three cases the City cites, *Curtin*, *Lexington*, and *Faubion*, resemble Plaintiffs' argument here. Opp'n 20-21. All three of the City's authorities involved unpersuasive arguments founded on no more than the typical demands of trial deadlines. Plaintiffs' argument here is that, right after ruling on the City's Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction, the Court set an unusually abbreviated trial schedule that gave parties essentially one month (coinciding with the holiday season) to prepare for trial, triage discovery, and try to settle. The City's authorities do not contemplate such unusual circumstances.

/ / /

/ / /

/ / /

/ / /

CONCLUSION

For these reasons, the Court should grant Plaintiffs' Motion for Attorney's Fees, deducting from the lodestar only those fees for the 6 hours billed by Ms. Palmerin for clerical work and applying a 1.25 multiplier.

Dated: June 1, 2020

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir
Anna M. Barvir
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *National Rifle Association, et al., v. City of Los Angeles, et al.*
Case No.: 2:19-cv-03212 SVW (GJSx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Benjamin F. Chapman
Los Angeles City Attorney
200 N. Main St., Suite 675
Los Angeles, CA 90012
benjamin.chapman@lacity.org
Attorneys for Defendants

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

Executed June 1, 2020.

s/ Laura Palmerin
Laura Palmerin