

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Fred Graves, Isaac Popoca, on their own
10 behalf and on behalf of a class of all pretrial
11 detainees in the Maricopa County Jails,

11 **Plaintiffs,**

12 v.

13 Paul Penzone, Sheriff of Maricopa County;
14 Bill Gates, Steve Gallardo, Jack Sellers,
15 Steve Chucri, and Clint L. Hickman,
16 Maricopa County Supervisors,

15 **Defendants.**

No. CV-77-00479-PHX-NVW

ORDER

16
17 Before the Court are Plaintiffs' Motion for Attorneys' Fees and Non-Taxable Costs
18 (Doc. 2531) and Plaintiffs' Bill of Costs (Doc. 2532). For the reasons stated below, the
19 motion will be granted for the most part and the objection to the bill of costs will be
20 overruled.

21 **I. BACKGROUND**

22 This action is 42 years old. The history of the proceedings has been detailed in prior
23 orders. (See, e.g., Doc. 2525). Cf. David Marcus, *Finding the Civil Trial's Democratic*
24 *Future After Its Demise*, 15 Nev. L. J. 1523, 1530-56 (2015) (detailing the history of this
25 litigation).

26 A class of pretrial detainees in the Maricopa County Jails brought this action in 1977
27 against the Maricopa County Sheriff and the Maricopa County Board of Supervisors
28 ("Defendants") for an injunction against violations of their constitutional rights. In 1981,

1 the parties entered into a consent decree that found liability and regulated certain jail
2 operations. A stipulated Amended Judgment was entered in 1995, which Defendants thrice
3 moved to terminate. Defendants' first motion, made in 1998, was denied on grounds later
4 reversed by the Court of Appeals; the second motion was made on remand in 2001 but was
5 not ruled on before the undersigned judge was assigned this case in 2008.

6 In 2008, after a 13-day evidentiary hearing, the Court found that numerous
7 provisions of the Amended Judgment remained necessary to correct ongoing constitutional
8 violations and entered a Second Amended Judgment restating the remaining operative
9 terms. The Court was required by law to await Defendants' proposals for remedying those
10 violations and thereby complying with the Second Amended Judgment. Over the course
11 of 2011 and 2012, the nonmedical provisions thereof were terminated upon Defendants'
12 demonstration of compliance and a Third Amended Judgment—which stated Defendants'
13 continuing violations—was entered.

14 In 2013, Defendants moved to terminate the Third Amended Judgment. The Court
15 largely denied the motion in 2014 and ordered remedies to correct the remaining
16 constitutional violations, which were restated in the Revised Fourth Amended Judgment.
17 Specifically, the Court continued some prospective relief and identified 31 requirements
18 Defendants had to fulfill. As the Court later stated, the Revised Fourth Amended Judgment
19 required them to meet various deadlines and anticipated “that Plaintiffs will promptly bring
20 to the Court’s attention any perceived lack of compliance with each requirement.” (Doc.
21 2309.) Indeed, the Court reiterated the obvious that the Plaintiffs were not “required to
22 accept as true Defendants’ assertions about their compliance.” (Doc. 2352.)

23 The Court found in 2017 that Defendants had demonstrated compliance with 21 of
24 the requirements and in 2018 determined Defendants had demonstrated compliance with
25 seven more. On January 15, 2019, the Court found Defendants had shown compliance
26 with an additional two, leaving one final requirement, stated in the Revised Fourth
27 Amended Judgment as follows: “Defendants will adopt and implement a written policy
28

1 requiring that mental health staff be consulted regarding discipline of any seriously
2 mentally ill pretrial detainee.” (Doc. 2299 at 6.) On July 19, 2019, Defendants filed a
3 compliance report regarding this requirement.

4 On September 19, 2019, the Court found Defendants had demonstrated compliance
5 with the last requirement and denied Plaintiffs’ motions. All the requirements having been
6 fulfilled, the Court terminated the Revised Fourth Amended Judgment. This motion for
7 attorneys’ fees followed.

8 **II. DISCUSSION**

9 Over many years, Defendants repeatedly contended they had complied with the
10 Court’s judgments and the Court repeatedly found these contentions were wrong.
11 Meanwhile, Plaintiffs repeatedly demonstrated Defendants were in violation of the
12 judgments and of their constitutional rights. Plaintiffs’ tireless advocacy has been essential
13 to defeating Defendants’ erroneous assertions of compliance. Based on this advocacy,
14 Plaintiffs are entitled to their attorneys’ fees, which, for the most part, were reasonably
15 incurred at a reasonable hourly rate.

16 **A. Plaintiffs Are Entitled to an Award of Their Attorneys’ Fees**

17 The threshold question is whether Plaintiffs are entitled to their attorneys’ fees. Two
18 statutes—the Civil Rights Attorneys’ Fees Awards Act, 42 U.S.C. § 1988(b), and the
19 Prison Litigation Reform Act (the “PLRA”)—govern. Under § 1988(b), the Court, “in its
20 discretion, may allow the prevailing party, other than the United States, a reasonable
21 attorney’s fee as part of the costs.” 42 U.S.C. § 1988(b). To qualify as a prevailing party:

22 [A] civil rights plaintiff must obtain at least some relief on the merits of his
23 claim. The plaintiff must obtain an enforceable judgment against the
24 defendant from whom fees are sought, or comparable relief through a consent
25 decree or settlement In short, a plaintiff “prevails” when actual relief on
26 the merits of his claim materially alters the legal relationship between the
27 parties by modifying the defendant’s behavior in a way that directly benefits
28 the plaintiff.

1 Farrar v. Hobby, 506 U.S. 103, 111-12 (1992) (internal citations omitted). A party that
2 prevails by obtaining a consent decree may recover attorneys’ fees under § 1988(b) for
3 monitoring compliance with the decree—even when such monitoring does not result in any
4 new judicially sanctioned relief. Keith v. Volpe, 833 F.2d 850, 855-57 (9th Cir. 1987); see
5 also Prison Legal News v. Schwarzenegger, 608 F.3d 446, 452 (9th Cir. 2010) (reaffirming
6 the holding in Keith and concluding the plaintiff “may recover attorneys’ fees under § 1988
7 for monitoring the state officials’ compliance with the parties’ settlement agreement”).

8 In addition, “[i]n actions by prisoners, it is not enough that fees are authorized under
9 the Civil Rights Attorney’s Fees Award Act of 1976.” Balla v. Idaho, 677 F.3d 910, 918
10 (9th Cir. 2012) (footnote omitted). Under the PLRA, “fees ‘shall not be awarded, except
11 to the extent that’ the fee was directly and reasonably incurred in proving a violation of the
12 plaintiff’s rights, and either the amount is proportionate to the relief ordered, or
13 alternatively, the fee is ‘directly and reasonably incurred in enforcing the relief.’” Id.
14 (quoting 42 U.S.C. § 1997e(d)(1)). “The PLRA defines relief as ‘all relief in any form that
15 may be granted or approved by the court, and includes consent decrees.’” Webb v. Ada
16 County, 285 F.3d 829, 834-35 (9th Cir. 2002) (quoting 18 U.S.C. § 3626(g)(9)).
17 Therefore—and as the Court previously determined—the PLRA permits compensation for
18 attorneys’ fees incurred for proving an actual violation of the plaintiff’s rights and for
19 enforcing a court order or a consent decree. Graves v. Arpaio, 633 F. Supp. 2d 834, 843-
20 44 (D. Ariz. 2009); accord Webb, 285 F.3d at 835 (holding the plaintiff’s “attorney’s fees
21 incurred for postjudgment enforcement of the district court’s orders and the consent decree
22 were compensable under the PLRA”).

23 Plaintiffs are and always have been the prevailing parties in this litigation. They
24 won a consent decree in 1981, which was reaffirmed in a stipulated judgment in 1995. In
25 the ensuing years, Plaintiffs repeatedly defeated in whole or in part Defendants’ numerous
26 assertions of compliance and attempts to terminate the stipulated judgments. Through
27 Plaintiffs’ persistence and Defendants’ recalcitrance, this case has become the poster child
28

1 for the maxim “injunctions do not always work effectively, without lawyers to see that the
2 enjoined parties do what they were told to do.” See Balla, 677 F.3d at 918. Plaintiffs are
3 entitled to their reasonable fees for monitoring and enforcing the Court’s judgments. They
4 did not have to obtain new judicially sanctioned relief, Prison Legal News, 608 F.3d at 452,
5 or proof of new constitutional violations, Webb, 285 F.3d at 834-35, to be entitled to an
6 award of their fees for monitoring and enforcing compliance with the original relief from
7 1981 and 1995.

8 Yet, Defendants argue (without citing any authority) they were the prevailing parties
9 as of January 15, 2019, and object to \$69,990.73 in Plaintiffs’ fees and expenses incurred
10 on or after that date. Defendants reason that notwithstanding (1) the consent decree they
11 entered into, (2) the numerous judgments that were entered by the Court, and (3) their
12 frequent and failed attempts to terminate them, they became the prevailing parties when
13 the Court terminated the Revised Fourth Amended Judgment last September. In other
14 words, Defendants believe they became the prevailing parties, and therefore not obligated
15 to pay attorneys’ fees, even before they ended their 40-year run of systematically violating
16 Plaintiffs’ constitutional rights.

17 Defendants’ contention is, to use Justice Scalia’s euphemism, “[p]ure applesauce.”
18 See King v. Burwell, ___ U.S. ___, 135 S. Ct. 2480, 2501 (2015) (Scalia, J., dissenting).
19 The issue here is not whether Defendants—after entering into a consent decree and failing
20 to right all their constitutional wrongs for decades—suddenly attained prevailing party
21 status in January 2019. Rather, the issue is whether Plaintiffs should be compensated for
22 their monitoring and enforcement work that continued after January 15, 2019, until the
23 Court’s September 19, 2019 order terminating the Revised Fourth Amended Judgment.

24 The Court’s January 15, 2019 order did not then terminate the Revised Fourth
25 Judgment or otherwise free Defendants from the Court’s oversight. To the contrary, the
26 Court ordered “that subparagraph (26) of Paragraph 5(a) of the Revised Fourth Amended
27 Judgment remain[ed] in effect.” (Doc. 2493 at 9.) In evaluating Defendants’ “convoluted,
28

1 indirect, and not understandable” proposed plan for demonstrating compliance therewith,
2 the Court explained:

3 Ten years have passed since Defendants were found in continuing violation
4 of constitutional standards under the 1981 consent decree and its
5 amendments. Defendants have undertaken multiple rounds of attempted
6 cure. Progress has been made each time, but after multiple attempts
7 Defendants still do not have it all right. The Court has deferred to
8 Defendants’ initiative to propose cures, but after ten years and in light of
9 Defendants’ inability even now to come up with a persuasive and effective
cure of this last continuing constitutional violation, it is time for the Court to
direct a cure and have this over with.

10 (Id. at 7-8.) In directing such a cure, the Court further ordered Defendants to provide a
11 new proposed plan to Plaintiffs, authorized Plaintiffs to provide an alternative plan, ordered
12 counsel to confer on the plans, and set a hearing on the plans. (Id. at 9.)

13 Only the September 19, 2019 order established the work had been done. It
14 terminated the Revised Fourth Amended Judgment, denied Plaintiffs’ pending motions,
15 and lifted the injunction. Defendants did not win the war or the battle; on September 19,
16 2019, they finally fled the battlefield. Plaintiffs are and always have been the prevailing
17 parties.

18 Recent Ninth Circuit authority is squarely on point. In Balla, a class action under
19 the PLRA, the plaintiffs moved to hold the defendants in contempt for dithering on setting
20 deadlines for complying with the injunction they had won years prior and were violating.
21 Balla, 677 F.3d at 911, 914. However, by the time the contempt motion was heard, the
22 violation had ceased and compliance had been achieved. Id. at 914. The district court
23 denied the motion, noting the principal defendant had complied and had not intentionally
24 violated the injunction. Id. Thereafter, the plaintiffs moved for an award of attorneys’
25 fees, costs, and expenses. Id. at 915. While the defendants conceded the plaintiffs were
26 the prevailing parties, they objected that “awarding anything for the contempt motion
27 would be erroneous, because plaintiffs had not prevailed on that motion.” Id. The district
28 court overruled the objection. Id.

1 The Court of Appeals held the denial of the contempt motion did not require denial
2 of fees. The fee award was not an abuse of discretion. *Id.* at 918. After finding the
3 plaintiffs’ compliance monitoring fees were compensable under *Keith*, *Prison Legal News*,
4 and other precedents, *id.* at 917-18, the Court of Appeals found the fees on the contempt
5 motion also could have been directly and reasonably incurred in enforcing the injunction,
6 even though the motion was denied due to the defendants’ recent compliance. *Id.* at 920.

7 It explained:

8 [S]uch losing motions as the one at issue here are a common and effective
9 tool for bringing about conformity to the law. Such motions might be seen
10 as the opposite of a Pyrrhic victory. Despite losing the battle over the
11 contempt motion, the prisoners nevertheless won the war by inducing the
State’s prompt return to compliance with the injunction.

12 *Id.* Indeed, before the contempt motion was filed, all the defendants produced regarding
13 compliance were hopeful claims. *Id.* Thirteen days after it was filed, the defendants
14 produced results. *Id.* The Court of Appeals determined the record “amply support[ed]”
15 the district court’s finding that the denied motion “played a key role” in achieving
16 compliance and such motions are appropriate “to ensure the injunctive relief is being
17 complied with.” *Id.* Noting “[t]he best defense against an action or motion to compel
18 compliance with a legal obligation is compliance,” the Court of Appeals concluded “[t]he
19 object of the motion was to obtain compliance, not to win an order hopefully leading to
20 compliance. The object was attained.” *Id.*

21 Here, on the September 19, 2019 rulings the Plaintiffs’ object was attained—the
22 constitutional violations they fought to redress were redressed. Moreover, all the Plaintiffs’
23 filings played a “key role” in pushing Defendants across the finish line—or more accurately
24 in dragging them across the finish line 38 years late. After the Court ordered Defendants
25 to provide Plaintiffs a proposed plan to redress the final violation, Plaintiffs, perhaps paying
26 heed to the Court’s observation that Defendants’ previous plan was “convoluted, indirect,
27 and not understandable,” (Doc. 2493), provided Defendants a plan of their own, conferred
28

1 with Defendants on their plan, and filed a proposal for demonstrating compliance. (Doc.
2 2498.) After the Court ordered a compliance plan, Plaintiffs (over Defendants' opposition)
3 successfully moved for an order to modify the compliance plan by making Defendants'
4 responsibilities thereunder more specific. (Docs 2500-01; 2506; 2509.) Even though the
5 Court later overruled Plaintiffs' objections to Defendants' compliance report, Plaintiffs'
6 advocacy proved to be an "effective tool for bringing about conformity to the law," see
7 Balla, 677 F.3d at 920, as it resulted in Defendants eliminating the last of the constitutional
8 violations of which Plaintiffs have long complained.

9 Defendants' objection to \$65,625.15 in fees and \$4,365.58 in attorney expenses
10 incurred on or after January 15, 2019 is accordingly overruled.

11 **B. Plaintiffs' Fees Are Largely Reasonable**

12 While Plaintiffs are entitled to their attorneys' fees, their fees must be reasonable.
13 The calculation of a reasonable fee award involves a two-step process known as the lodestar
14 method. First, the Court must calculate the lodestar figure "by multiplying the number of
15 hours reasonably expended on a case by a reasonable hourly rate." *Kelly v. Wengler*, 822
16 F.3d 1085, 1099 (9th Cir. 2016) (internal citation omitted). This figure "roughly
17 approximates the fee that the prevailing attorney would have received if he or she had been
18 representing a paying client who was billed by the hour in a comparable case," *Perdue v.*
19 *Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010), and is presumptively reasonable.
20 *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013) (internal citation
21 omitted). Second, the Court must determine whether to adjust the lodestar figure upward
22 or downward based on the factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d
23 67 (9th Cir. 1975), abrogated on other grounds by *City of Burlington v. Dague*, 505 U.S.
24 557 (1992). *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). The Kerr
25 factors are:

- 26 (1) the time and labor required, (2) the novelty and difficulty of the questions
27 involved, (3) the skill requisite to perform the legal service properly, (4) the
28 preclusion of other employment by the attorney due to acceptance of the case,

1 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time
2 limitations imposed by the client or the circumstances, (8) the amount
3 involved and the results obtained, (9) the experience, reputation, and ability
4 of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and
5 length of the professional relationship with the client, and (12) awards in
6 similar cases.

7 Kerr, 526 F.2d at 70; cf. Local Rule LRCiv 54.2(c)(3) (listing “various factors bearing on
8 the reasonableness of the requested attorneys’ fee award,” which track the Kerr factors).
9 A court need only consider factors “that are not already subsumed in the initial lodestar
10 calculation.” Fischer, 214 F.3d at 1119 (footnote and internal citations omitted). “Among
11 the subsumed factors . . . taken into account in . . . the lodestar calculation are: ‘(1) the
12 novelty and complexity of the issues, (2) the special skill and experience of counsel, (3)
13 the quality of representation, . . . (4) the results obtained,’ and (5) the contingent nature of
14 the fee agreement.”¹ Morales v. City of San Rafael, 96 F.3d 359, 364 n.9 (9th Cir. 1996)
15 (quoting Cabrales v. County of Los Angeles, 864 F.2d 1454, 1464 (9th Cir. 1988), vacated
16 on other grounds, 490 U.S. 1087 (1989), reinstated, 886 F.3d 235 (9th Cir. 1989)) (citing
17 Dague, 505 U.S. at 565-67); see also Gonzalez, 729 F.3d at 1209 n.11 (noting “we presume
18 that the district court accounts for” the factors recited in Morales (internal alterations,
19 quotation marks, and citation omitted)).

20 In addition, fees for the successful party need not be reduced for unsuccessful
21 strategies. See Hensley v. Eckerhart, 461 U.S. 424, 435 (1983) (“Litigants in good faith
22 may raise alternative legal grounds for a desired outcome, and the court’s rejection of or
23 failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is
24 what matters.” (footnote omitted)). Unsuccessful strategies are fully compensable unless
25 they are expended on separate and distinct claims.

26 Finally, where the reduction from the amount of fees requested is relatively small,
27 as it is here, only a cursory explanation is necessary:

28 ¹ Upward enhancement based on the contingent nature of counsel’s services is not
allowed under § 1988. Dague, 505 U.S. at 565-67.

1 When the district court makes its award, it must explain how it came up with
2 the amount. The explanation need not be elaborate, but it must be
3 comprehensible. . . . Where the difference between the lawyer’s request and
4 the court’s award is relatively small, a somewhat cursory explanation will
5 suffice. But where the disparity is larger, a more specific articulation of the
6 court’s reasoning is expected. . . . [T]he burden of producing a sufficiently
7 cogent explanation can mostly be placed on the shoulders of the losing
8 parties, who not only have the incentive, but also the knowledge of the case
9 to point out such things as excessive or duplicative billing practices. If
10 opposing counsel cannot come up with specific reasons for reducing the fee
11 request that the district court finds persuasive, it should normally grant the
12 award in full, or with no more than a haircut.

13 Moreno v. City of Sacramento, 534 F.3d 1106, 1111, 1116 (9th Cir. 2008) (internal citation
14 omitted).

15 **1. Plaintiffs’ Hourly Rates Are Reasonable and Comply with the PLRA**

16 “A reasonable hourly rate is ordinarily ‘the prevailing market rate[] in the relevant
17 community.’ Kelly, 822 F.3d at 1099 (quoting Perdue, 559 U.S. at 551). Generally, the
18 “relevant community is the forum in which the district court sits.” Gonzalez, 729 F.3d at
19 1205 (internal quotation marks omitted). The fee applicant bears the burden of producing
20 “satisfactory evidence . . . that the requested rates are in line with those prevailing in the
21 community for similar services by lawyers of reasonably comparable skill, experience and
22 reputation.” Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 980 (9th Cir. 2008) (quoting
23 Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984)). Satisfactory evidence includes
24 “[a]ffidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the
25 community, and rate determinations in other cases.” United Steelworkers of Am. v. Phelps
26 Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990); cf. Local Rule LRCiv 54.2(d)(4)(B)
27 (requiring moving counsel to submit an affidavit in part regarding “the comparable
28 prevailing community rate or other indicia of value of the services rendered for each
attorney for whom fees are claimed”). In addition, a district court may “rely on its own
familiarity with the legal market” in determining a reasonable hourly rate. Ingram v.
Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011).

1 However, the PLRA adds to this framework. Under the PLRA, “the hourly rate
2 used as the basis for a fee award is limited to 150 percent of the hourly rate used for paying
3 appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A.” Kelly, 822 F.3d at
4 1100 (citing 42 U.S.C. § 1997e(d)(3)). The hourly rate established under section 3006A
5 “is the amount the Judicial Conference [of the United States] authorized and requested
6 from Congress.” Parsons v. Ryan, 949 F.3d 443, 465 (9th Cir. 2020). That amount can be
7 derived from the Congressional Budget Summary or the Report of the Proceedings of the
8 Judicial Conference of the United States. See id. at 464-65, 465 n.12 (holding the district
9 court did not err in consulting only the Congressional Budget Summary); see also Perez v.
10 Cate, 632 F.3d 553, 555-56, 555 n.1 (9th Cir. 2011). The rate cap set by the PLRA applies
11 to both attorneys’ fees and paralegal fees. Perez, 632 F.3d at 554.

12 Plaintiffs seek fees billed by their attorneys at a rate of \$223.50 per hour and by
13 paralegals, law students, and various other professionals at rates of \$165.00 per hour (for
14 the Washington-based professionals) and \$150.00 per hour (for the Phoenix-based
15 paralegal). Based on their attorney affidavits, these rates and those of their colleagues are
16 reasonable and within the prevailing market rates for both Washington and Phoenix.
17 Indeed, and PLRA rates for the more senior lawyers fall dramatically below the market
18 rates for both Washington and Phoenix. Under the Judiciary Fiscal Year 2020
19 Congressional Budget Summary, the current CJA rate authorized by the Judicial
20 Conference is \$149.00 per hour, and the maximum PLRA rate is accordingly \$223.50 per
21 hour. See Admin. Office of the U.S. Courts, The Judiciary Fiscal Year 2020 Congressional
22 Budget Summary 37-38 (Feb.2001),
23 [https://www.uscourts.gov/sites/default/files/fy_2020_congressional_budget_summary_0.](https://www.uscourts.gov/sites/default/files/fy_2020_congressional_budget_summary_0.pdf)
24 pdf (last visited Apr. 23, 2020). Defendants do not object to any of the requested rates, and
25 the Court finds them reasonable.

26 The PLRA rate in 2020 is not the same as it was in the other years in which Plaintiffs
27 billed (2014-2019). However, nothing in the PLRA establishes that historical PLRA rates
28

1 should be employed in lieu of the current rate as the cap for when fees are awarded. It
2 merely states, “No award of attorney’s fees . . . shall be based on an hourly rate greater
3 than 150 percent of the hourly rate established under section 3006A of Title 18 for payment
4 of court-appointed counsel.” 42 U.S.C. § 1997e(d)(3). As of this ruling, the “hourly rate
5 established under section 3006A,” is \$149.00 according to the 2020 Budget Summary.
6 150% percent of that rate is therefore allowable.

7 Moreover, even if the statutory language were ambiguous, ambiguity would favor
8 application of the current rate cap. As the Supreme Court has explained in the context of
9 42 U.S.C. § 1988(b):

10 Clearly, compensation received several years after the services were
11 rendered—as it frequently is in complex civil rights litigation—is not
12 equivalent to the same dollar amount received reasonably promptly as the
13 legal services are performed, as would normally be the case with private
14 billings. We agree, therefore, that an appropriate adjustment for delay in
15 payment—whether by the application of current rather than historic hourly
16 rates or otherwise—is within the contemplation of the statute.

17 Missouri v. Jenkins, 491 U.S. 274, 283-84 (1989) (footnoted omitted); see also Gates v.
18 Deukmejian, 987 F.2d 1392, 1406 (9th Cir. 1993) (recognizing that “district courts have
19 the discretion to compensate prevailing parties for any delay in the receipt of fees by
20 awarding fees at current rather than historic rates in order to adjust for inflation and loss of
21 the use of funds” (internal citations omitted)). Numerous district courts have employed the
22 reasoning of Jenkins in awarding fees at then-current PLRA rates to compensate for delays
23 in payment. E.g., Lira v. Cate, No. C 00-0905 SI, 2010 WL 727979, at *4 (N.D. Cal. Feb.
24 26, 2010); Skinner v. Uphoff, 324 F. Supp. 2d 1278, 1282-83 (D. Wyo. 2004). Contra
25 Plata v. Schwarzenegger, No. C01-1351 TEH, 2009 WL 2997412, at *2 (N.D. Cal. Sept.
26 16, 2009) (determining the current PLRA rate should not be used)

26 **2. Plaintiffs’ Hours Billed Are Mostly Reasonable**

27 “[A] ‘reasonable’ number of hours equals the number of hours which could
28 reasonably have been billed to a private client.” Gonzalez, 729 F.3d at 1202 (internal

1 alterations and quotation marks omitted). The prevailing party bears the burden of
2 “submitting billing records to establish that the number of hours it has requested are
3 reasonable.” *Id.* (internal citation omitted); see also Local Rule LRCiv 54.2(d)-(e)
4 (requiring moving counsel to submit a “task-based itemized statement of time expended
5 and expenses”).

6 In determining the proper number of hours to be included in a lodestar calculation,
7 “excessive, redundant, or otherwise unnecessary” hours should be excluded. *Hensley*, 461
8 U.S. at 434. There are two methods for excluding such hours. First, courts may exclude
9 them after “conduct[ing] an hour-by-hour analysis of the fee request.” *Gonzalez*, 729 F.3d
10 at 1203 (internal quotation marks omitted). Second, courts “faced with a massive fee
11 application” may “make across-the-board percentage cuts either in the number of hours
12 claimed or in the final lodestar figure.” *Id.* (internal quotation marks omitted). Overall, as
13 the Supreme Court has explained:

14 [T]rial courts need not, and indeed should not, become green-eyeshade
15 accountants. The essential goal in shifting fees (to either party) is to do rough
16 justice, not to achieve auditing perfection. So trial courts may take into
17 account their overall sense of a suit, and may use estimates in calculating and
allocating an attorney’s time.

18 *Fox v. Vice*, 563 U.S. 826, 838 (2011).

19 Defendants have raised numerous objections to the hours billed by Plaintiffs’
20 attorneys and their colleagues. The Court has reviewed all the objections and all the
21 schedules in support thereof and overrules all of them as unmeritorious except where
22 specifically sustained. In general, the services expended were reasonable in amount and
23 value. Moreover, the principle that unsuccessful strategies are compensable unless they
24 are expended on separate claims defeats numerous objections. The objections are
25 addressed below.

26 **a. “Excessive, Redundant, and Unnecessary” Pleadings.** Defendants
27 object to \$74,021.70 in fees as “excessive, redundant or unnecessary.” Examination of the
28

1 schedule submitted does not bear that out. Plaintiffs' counsel's work with experts (who
2 were court-appointed monitors by agreement of the parties), including "telephone calls,
3 consults, drafting, and revising declarations" (Doc. 2533 at 5), was entirely proper.
4 Plaintiffs were entitled to be thorough and not obligated to follow Defendants' oft-repeated
5 practice of relying on bare assertions. The experts were appointed to monitor Defendants'
6 (often-incorrect) assertions of compliance. No fees were sought or awarded on discovery
7 motions; that would have been the time for Defendants to seek such fee awards. Both
8 parties have made arguments that had been resolved in prior orders. These objections are
9 overruled.

10 **b. Clerical Tasks.** Clerical tasks are not compensable as attorneys' fees.
11 But larger tasks customarily performed by legal assistants may be compensable at legal
12 assistant rates. See Jenkins, 491 U.S. at 284-85 (stating "that the 'reasonable attorney's
13 fee' provided for by statute should compensate the work of paralegals [and law clerks]"
14 and support staff "whose labor contributes to the work product" of an attorney); *cf. Cont'l*
15 *Townhouses E. Unit One Ass'n v. Brockbank*, 152 Ariz. 537, 544, 733 P.2d 1120, 1127 (Ct.
16 App. 1986) ("We conclude that legal assistant and law clerk services may properly be
17 included as elements in attorneys' fees applications and awards"). Plaintiffs acquiesce in
18 the objection to 18.5 hours (\$3,602.40) and the objection as to those hours is sustained.
19 The objection is otherwise overruled.

20 **c. Continuances.** The objection to \$1,450.65 in time spent preparing 21
21 motions to extend court deadlines is unexplained as to why any or all the continuances
22 were unnecessary. All were reasonable. The objection is overruled.

23 **d. Training and File Review.** Clients should not be charged for general
24 training of junior lawyers and legal assistants. But seasoned lawyers should divide their
25 labor with junior lawyers and legal assistants to provide cost-effective services. But
26 dividing labor necessitates supervision on the part of those delegating work. Services in
27 providing such supervision are both reasonable and indispensable. Meanwhile, in a 42-
28

1 year-old case such as this, turnover among lawyers and legal assistants is inevitable, and
2 new people must learn enough of the case to provide needed services. Defendants’
3 objection to Plaintiffs’ fees incurred for getting their new service providers up to speed
4 with the case demands the impossible—that Plaintiffs’ attorneys litigate a prisoner class
5 action without knowing what they were doing. This objection is overruled.

6 **e. Soliciting and Staffing New Class Counsel Attorneys.** Defendants
7 object to \$4,249.95 in Plaintiffs’ counsel’s time spent attempting to get new class counsel
8 without having them first certified as class counsel. In July 2015, attorneys from a new
9 law firm made voluntary appearances as Plaintiffs’ counsel without first moving for
10 certification as class counsel. (Docs. 2319-20.) A few days later, existing local class
11 counsel moved to withdraw without indicating why other local class counsel would be
12 needed. (Doc. 2321.) The Court denied the motion, noting that under Local Rule LRCiv
13 83.3(b), “substitution of counsel is accomplished by seeking court approval for the
14 substitution, not by filing a notice of appearance by new counsel followed by a motion to
15 withdraw by current counsel.” (See Doc. 2322.) The Court later clarified that Plaintiffs’
16 counsel and existing local class counsel were “the only court-appointed class counsel for
17 Plaintiffs.” (Doc. 2327.) After existing local class counsel filed a rule-compliant
18 application for substitution of counsel, (Doc. 2326), the Court simultaneously discharged
19 existing local class counsel and disallowed the appointment of new counsel. (Doc. 2331.)
20 With this case nearing the end (and long past the point it should have been over), it would
21 have incurred substantial additional and unnecessary legal fees for new local class counsel
22 to be certified and get up to speed. An award of fees will be denied for Plaintiffs’ counsel’s
23 attempt to get new class counsel, not because it failed, but because the stratagem was
24 wanting in candor. Therefore, Defendants’ objection to \$4,249.95 in fees for soliciting and
25 staffing new local class co-counsel is sustained.

26 **f. Travel Time.** Defendants object to \$21,858.30 in Plaintiffs’
27 counsel’s air travel time fees, asserting that Local Rule LRCiv 54.2(e)(2)(D) states that
28

1 “[o]rdinarily air travel time should not be charged.” However, as of December 1, 2019,
2 that provision of rule was repealed. Moreover, even before it was repealed, that rule was
3 ruled invalid as it exceeded the Court’s statutory authorization to make local rules of
4 procedure. *11333, Inc. v. Certain Underwriters at Lloyd’s, London*, No. CV-14-02001-
5 PHX-NVW, 2018 WL 2322783, at *2 (D. Ariz. May 22, 2018). It contradicted the
6 substantive law of 42 U.S.C. § 1988(b) regarding what legal services are compensable.
7 Whether air travel time fees are reasonably incurred is a question of fact. See *United States*
8 *v. \$28,000.00 in U.S. Currency*, 802 F.3d 1100, 1106 (9th Cir. 2015) (referring to the
9 “district court’s factual finding of reasonableness” of a fee request); *Chalmers v. City of*
10 *Los Angeles*, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986) (noting “transportation costs” are
11 recoverable under 42 U.S.C. § 1988 as “out-of-pocket expenses incurred by an attorney
12 which would normally be charged to a fee paying client”). Here, the air travel was
13 reasonably necessary to class counsel’s representation. The objection to \$21,858.30 in
14 travel time fees is overruled.

15 **g. Billing Entry Error.** Plaintiffs acquiesce to this objection, which is
16 sustained in the amount of \$1,452.75.

17 **h. Costs Billed “Without a Receipt or Documentation.”** Defendants
18 object to \$584.54 in expenses without receipts. All are recorded in Plaintiffs’ counsel’s
19 contemporaneous Timeslips records. It is not clear that the Local Rule disqualifies these
20 de minimis expenses, recorded contemporaneously. Therefore, Defendants’ objection to
21 \$584.54 in expenses is overruled.

22 **i. Travel Expenses.** Air travel expenses for airfare fees, baggage fees,
23 and ticket change fees are plainly reasonable. However, Plaintiffs acquiesce to the
24 objection to a \$75.00 flight change fee and the objection as to that expense is sustained.
25 The objection is otherwise overruled.

26 **j. PACER.** The \$45.70 charge for PACER fees is unique to this case
27 and is therefore a proper charge. Defendants’ objection to that charge is overruled.
28

1 **k. Interest.** The attorneys' fees claims are unliquidated until the
2 reasonable amounts are determined. Therefore, pre-judgment interest may not be awarded.
3 Post-judgment interest at the federal rate shall be awarded. See 28 U.S.C. § 1961.

4 **3. The Lodestar Shall Not Be Adjusted**

5 Neither party seeks an adjustment of the lodestar figure. The Court has considered
6 the Kerr factors not subsumed in the initial lodestar calculation. See supra, section II.B.
7 Based on the analysis conducted in section III.C.1. of the Court's April 20, 2009 attorneys'
8 fees order, see Graves, 633 F. Supp. 2d at 847, the Court finds no reason to adjust the initial
9 lodestar figure downward. The lodestar shall stand.

10 Plaintiffs will also be awarded their reasonable attorney fees incurred on their
11 Motion for Attorneys' Fees and Non-Taxable Costs (Doc. 2531) and not already claimed
12 in the amounts quantified.

13 IT IS THEREFORE ORDERED that Defendants' objections to \$9,380.10 of
14 Plaintiffs' fee claim are sustained.

15 IT IS FURTHER ORDERED that Plaintiffs' Motion for Attorneys' Fees and Non-
16 Taxable Costs (Doc. 2531) is granted in the amount of \$488,893.75.

17 IT IS FURTHER ORDERED that Defendants' objection (Doc. 2534) to the Bill of
18 Costs (Doc. 2532) is overruled in its entirety.

19 IT IS FURTHER ORDERED that Plaintiffs may submit by May 8, 2020,
20 Supporting Documentation in support of any claim for attorney fees on their Motion
21 incurred after the amounts they previously quantified; Defendants may file objections by
22 May 20, 2020; Plaintiffs may file a reply to any objection by May 28, 2020.

23 Dated this 27th day of April 2020.
24

25
26 

27 Neil V. Wake
28 Senior United States District Judge