

1
2 **UNITED STATES DISTRICT COURT**
3 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

4 **ISAAC MILLER,**

5 **Plaintiff,**

6 **v.**

7 **STEVEN JOHN SCHMITZ, Hanford Police**
8 **Officer and CITY OF HANFORD, California,**

9 **Defendants.**

1:12-cv-00137-LJO-SAB

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES**

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11 **I. INTRODUCTION**

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13 This civil rights action pursuant to 42 U.S.C. § 1983 proceeded to jury trial where a verdict for
14 Plaintiff was entered in the amount of \$500,000 in damages. Following the trial, Plaintiff filed a
15 motion for attorneys' fees and costs as the prevailing party under 42 U.S.C. §1988 in the amount of
16 \$459,682.45, which Defendants opposed. The Court granted the request in part, awarding
17 \$201,871.36. Plaintiff appealed this decision, and on June 22, 2016, the Ninth Circuit affirmed this
18 Court's determination of a reasonable hourly rate in awarding fees, but remanded for a more clear
19 explanation for the reduction of the number of hours expended by Plaintiff's counsel. Following the
20 appellate court remand, the parties engaged in limited discovery relevant to the fee issue and filed
21 supplemental briefs.

22 For the reasons set forth below, Plaintiff's request for attorneys' fees is GRANTED IN PART
23 and DENIED IN PART.
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1 **II. PROCEDURAL AND FACTUAL HISTORY**

2 On January 29, 2012, Plaintiff filed this action for civil rights violations against Defendants
3 Officer Steven John Schmitz ("Schmitz"), Ronald Silva ("Silva") and the City of Hanford ("the City")
4 based on Plaintiff's arrest and prosecution following an altercation that occurred on February 17, 2010.
5 This Court construed Plaintiff's complaint as one alleging claims for malicious prosecution against
6 Schmitz under 42 U.S.C. § 1983, for expungement of Plaintiff's arrest record by the city pursuant to 28
7 U.S.C. § 2201, and for malicious prosecution against Silva under California law.

8 On April 15, 2013, Plaintiff and Silva reached a settlement agreement. On August 6, 2013, the
9 Court denied Schmitz and the City's (collectively, "Defendants") motion for summary judgment of
10 Plaintiff's claims against them.

11 A 7-day jury trial was held on the two claims against Defendants. On November 27, 2013, the
12 jury returned a favorable verdict for Plaintiff as to both claims and awarded Plaintiff \$500,000 in
13 damages. On December 30, 2013, Plaintiff filed a motion for attorneys' fees and costs pursuant to
14 42 U.S.C. §1988(b).

15 Defendants opposed the request, asserting the unreasonableness of both Plaintiff's requested
16 hourly rate and the number of hours Plaintiff's counsel and his staff expended on the litigation.
17 Defendants also argued that Plaintiff's request for reimbursement for the costs of his investigator, Ivan
18 Hurd, was deficient in that Mr. Hurd did not submit a declaration, utilized block billing to document
19 his time, and billed for time Mr. Hurd spent observing trial, which was unnecessary. (Doc. 153.)

20 Plaintiff filed a reply asserting all of his attorneys' fees and costs should be awarded. Plaintiff
21 also supplemented his motion for attorneys' fees and costs seeking an additional \$19,335 for attorneys'
22 fees associated with briefing the motion itself. (Doc. 159.)

23 On February 18, 2014, the Court issued an order reducing Plaintiff's counsel's requested hours
24 by 60 percent for work performed by attorneys Kevin Little and Alex Checkelnik, law clerk Lorena
25 Garcia, and excluded all hours worked by attorney Michelle Tostenrude and Maxine Vazquez as

1 clerical in nature; the Court awarded a total of \$171,690.50 for all work performed on the case by Mr.
2 Little and his associates and staff. The Court also awarded \$30,180.86 in costs. (Doc. 163.)

3 On February 24, 2014, Plaintiff filed a motion for reconsideration, which was denied on April
4 29, 2014. (Doc. 194.) Plaintiff filed a Notice of Appeal on May 19, 2014. On appeal, the Court's
5 order on Plaintiff's motion for attorneys' fees was affirmed in part, and remanded in part. (Doc. 202.)
6 Following remand, Plaintiff served a subpoena seeking production of Defendants' counsel's billing
7 records, and Defendants filed a motion to quash the subpoena, which was granted in part. After
8 compliance with a modified version of the subpoena, the parties filed supplemental briefs regarding
9 the issue of attorneys' fees.

10 On remand, Plaintiff has modified his fee request and seeks reimbursement for (1) the time the
11 Court originally reduced from Mr. Little's billing; (2) attorney's fees for appellate work; and (3)
12 attorneys' fees for remand proceedings. Plaintiff's request for attorneys' fees prior to appeal includes
13 the 1,199.81 hours originally billed,¹ subtracting the 459.88 hours already compensated pursuant to the
14 Court's original order, and subtracting 45.5 hours Mr. Little has reduced (after appeal) from his time
15 expended during trial. (Doc. 211, p. 13. p. 84-87.) In total, Plaintiff seeks compensation for 694.43²
16 hours of time at \$350 per hour for pre-appeal work, 118.2 hours of time for appellate work at \$375 per
17 hour; and 8 hours for work upon remand at \$400 per hour. (Doc. 218.)

18 Defendants oppose this request arguing the initial 60-percent reduction of Mr. Little's time was
19 justifiable. Alternatively, Defendants request the Court reduce 192.52 hours billed by Mr. Little as
20 unreasonable, and request additional reductions to the supplemental time requested for work
21 performed post-trial and reductions for time spent on work related to the appeal. (Doc. 217, 24:7-14.)

22 ¹ This hourly total is comprised of 1,149.71 hours expended by Mr. Little from January 2012 through December 2013 (Doc.
23 135-1) plus 50.1 hours worked by Mr. Little from December 2013 through January 2014 on post-trial proceedings before
this Court. (Doc. 159-1).

24 ² Plaintiff's brief states that his request is as follows: "Trial Fees: \$226,950.05, representing compensation for the reduced
25 hours of 648.43 [] (1199.81 total fees billed, minus 459.88 for which the undersigned has already been paid, minus the 45.5
written off trial hours at \$350 per hour." (Doc. 218, 5:19-21.) The problem with this, however, is that 1199.81 – 459.88 –
45.5 = 694.43 hours, not 648.43.

1 Plaintiff responds that Defendants' counsel billed 1,511.3 hours in this litigation, which does
2 not include any time spent after November 28, 2016. (Doc. 218.) Plaintiff maintains that Defendants'
3 counsel's billing hours, although not dispositive, corroborates the reasonableness of Mr. Little's nearly
4 1,200 hours spent prosecuting the case (pre-appeal) for Plaintiff.

5 **III. ANALYSIS**

6 **A. Legal Standard**

7 The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988(b), authorizes district
8 courts to award "a reasonable attorney's fee" to prevailing civil rights litigants. "The purpose of §
9 1988 is to ensure effective access to the judicial process for persons with civil rights grievances."
10 *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). "[T]he district court has discretion in determining the
11 amount of a fee award." *Id.* at 437. Additionally, a district court may use its discretion to include
12 expert fees as part of the attorneys' fee award. 42 U.S.C. § 1988(c).

13 Reasonable attorney's fees are based on the "lodestar" calculation set forth in *Hensley*, 461 U.S.
14 at 433. The court must first determine a reasonable fee by multiplying "the number of hours
15 reasonably expended on the litigation" by "a reasonable hourly rate." *Id.* "The district court . . .
16 should exclude from this initial fee calculation hours that were 'not reasonably expended.'" *Id.* at 433–
17 34. After calculating the lodestar amount, the court can further adjust the lodestar calculation by
18 considering the following factors:

19 (1) the time and labor required, (2) the novelty and difficulty of the questions involved,
20 (3) the skill requisite to perform the legal service properly, (4) the preclusion of other
21 employment by the attorney due to acceptance of the case, (5) the customary fee, (6)
22 whether the fee is fixed or contingent, (7) time limitations imposed by the client or the
23 circumstances, (8) the amount involved and the results obtained, (9) the experience,
24 reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the
25 nature and length of the professional relationship with the client, and (12) awards in
similar cases.

Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), *abrogated on other grounds by City*
of Burlington v. Dague, 505 U.S. 557 (1992); *see also Stetson v. Grissom*, 821 F.3d 1157, 1166–67 (9th

1 Cir. 2016). Further, time spent establishing entitlement to an amount of attorney's fees awardable under
2 Section 1988 is also compensable. *In re Nucorp Energy, Inc.*, 764 F.2d 655, 660-62 (9th Cir. 1985).

3 **B. Hourly Rates**

4 Plaintiff was awarded a \$350 hourly rate for Mr. Little's work performed prior to the appeal.
5 This rate determination was affirmed by the appellate court. In remand proceedings following appeal,
6 Plaintiff seeks \$375 per hour for work performed on the appeal and \$400 per hour for work performed
7 post-remand before this Court. Defendants do not oppose these hourly rate increases, and they are
8 within the rates attested to by local counsel for attorneys with Mr. Little's years of experience (*see* Doc.
9 135-3). These rates are also corroborated by case law finding rates in the Fresno division of the Eastern
10 District to be within the \$400/hour range for very experienced counsel.³ *See Willis v. City of Fresno*,
11 No. 1:09-cv-01766-BAM, 2014 WL 3563310, at *11 (E.D. Cal. July 17, 2014).

12 **C. Hours Spent by Plaintiff's Counsel Prior To Appeal**

13 In the Court's experience, expending more than 1,200 hours litigating a § 1983 malicious
14 prosecution case like this one through trial and post-trial proceedings is generally unreasonable. Here,
15 there were only two claims and three defendants - one of whom settled with Plaintiff prior to trial; there
16 were only two limited discovery disputes, one of which was resolved informally; Plaintiff had to defend
17 a motion to dismiss, a motion to strike, and a motion for summary judgment – none of which were
18 atypical or particularly complex; and the trial was limited to seven days, which included jury
19 deliberation. The underlying legal issues were not complex, the facts were not overly convoluted or
20 voluminous, the procedural history of the case was straight-forward, and the post-trial proceedings were
21 limited to Defendants' motion for a new trial and Plaintiff's motion for attorneys' fees. In general, these
22 factors do not suggest 1,200 attorney hours to litigate this case is reasonable. This is particularly true
23 when similar malicious prosecution cases are litigated in far less time, as noted in the Court's original

24 ³ Plaintiff's supplemental fee request for work performed after trial but before the appeal indicates a \$375 hourly rate. (Doc.
25 159-1.) However, Plaintiff's supplemental brief on remand and his reply brief both indicate a rate of \$350 per hour for the
20.1 hours of work post-trial, pre-appeal. Given that this is the most updated briefing from Plaintiff, the hourly rate of \$350
– as requested – will be applied to this post-trial, pre-appeal time spent.

1 order. *See, e.g., Sulkowska v. City of New York*, 170 F. Supp. 2d 359 (S.D.N.Y. 2001) (false arrest and
2 malicious prosecution case where plaintiff prevailed at trial and awarded 396.49 hours); *Alfonso v.*
3 *Aufiero*, 66 F. Supp. 2d 183, 189 (D. Mass. 1990) (Awarding attorney's fees for 534.48 hours billed by
4 plaintiff's lead counsel after 12-day jury trial involving § 1983 Fourth Amendment and state malicious
5 prosecution claims against city and eight individual police officers).⁴ On appeal, the Ninth Circuit held
6 this Court did not explain the relevance of these cases in reducing the fees by 60 percent and did not
7 provide the parties an opportunity to comment upon them in reducing the hours of attorney work
8 requested by Plaintiff.

9 On remand, Plaintiff contends the cases cited by the Court in its original order were dissimilar
10 to this case in that only two involved plaintiffs who prevailed on their malicious prosecution claims,
11 and of those two cases, the proceedings were far less complicated and culminated in non-jury trials.
12 According to Plaintiff, the hours expended by counsel in these cases have no real comparable relevance
13 to this matter. Plaintiff cites a number of other cases, however, that he asserts are more comparable to
14 this case, and where much larger amounts of attorney time were found reasonable. (Doc. 211, 4:14-
15 5:17 (citing *Mendez v. County of San Bernardino*, 540 F. 3d 1109 (9th Cir. 2008) (finding plaintiff's
16 counsel's expenditure of 2,144 hours neither in bad faith nor excessive in a case involving false arrest
17 and illegal search claims); *Adams v. City of Rialto*, No. 04-cv-155-VAP (SGLx), 2006 WL 7090890
18 (C.D. Cal. July 20, 2006) (1,233.8 hours spent by three experienced attorneys in a vigorously litigated
19 excessive force case; other claims asserted were dismissed before trial); *Beecham v. City of West*
20 *Sacramento*, No. 2:07-cv-1115-JAM-EFB, 2009 WL 3824793 (E.D. Cal. Nov. 16, 2009) (finding 1,198
21 hours of attorney time and 207.7 hours of law clerk and paralegal time reasonable in contested
22 excessive force/false arrest case, although amount of fees was reduced due to limited success)).)

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⁴ The Court also cited *Elusta v. City of Chicago*, 760 F. Supp. 2d 792 (D. Ill. 2010); *Santiago v. Mercado*, 175 F. Supp. 2d 164 (D.P.R. 2001); *Robinson v. Fetterman*, 387 F. Supp. 2d 432 (E.D. Pa. 2005); and *Connor v. Ulrich*, 153 F. Supp. 2d 199, 204 (E.D.N.Y. 2001).

1 Defendants argue the cases cited in the Court's original order (Doc. 163) provide a meaningful
2 measure to gauge the reasonableness of the requested attorneys' fees. Specifically, in *Alfonso v.*
3 *Aufiero*, Defendants note the case involved eight police officer defendants along with the city, it
4 required a bifurcated 12-day jury trial, and the jury was required to deliberate for 7 days, as opposed to
5 the 2.5 hours required for the jury to deliberate here. The plaintiff in *Alfonso* sought reimbursement for
6 1,030 hours of attorney time, but the court awarded only 753.6 hours. Defendants argue *Alfonso*
7 supports this Court's reduced fee award as that was a much more complex and contested case, and the
8 *Alfonso* court still only awarded the prevailing party roughly 50 percent of the time the plaintiff initially
9 sought. Defendants also contend the cases cited by Plaintiff to support a higher award of attorneys' fees
10 were far more contentious in that the litigants had more disputes over discovery, more motions were
11 litigated, and/or they required much longer trials. (Doc. 217, pp. 9-15.)

12 In reply, Plaintiff notes Defendants' counsel here spent over 1,500 hours defending the case,
13 which corroborates the reasonableness of Plaintiff's counsel spending nearly 1,200 hours prosecuting
14 the case. Despite Defendants' citation to some of Mr. Little's prior cases which they claim are much
15 more complex and for which a similar number of attorney hours were worked, Plaintiff asserts those
16 cases were not more complex than this matter and any additional complexity was offset by other
17 variables, such as limited discovery or fewer motions litigated. (Doc 218.)

18 As evidenced by the parties' dispute over what factors tend to result in a higher or lower number
19 of hours reasonably spent by counsel across different cases, a comparative analysis does not provide a
20 precise rubric to evaluate Plaintiff's fee request. No two cases are *exactly* the same. Even where the
21 same issues are litigated against the same number of defendants in a similar amount of time, there are
22 many variables affecting the hours of attorney work not apparent on the face of a docket including the
23 number of witnesses deposed or interviewed, the amount of travel required for depositions, the time to
24 meet and confer with opposing counsel over disputes that were resolved without court intervention, and
25 the volume of documents or items produced and reviewed. These and other variables are often

1 accounted for only by billing records that contain adequate descriptions of the tasks undertaken. As
2 such, rather than a comparative approach to assess reasonableness of the time expended on this
3 litigation, the Court turns to a line-by-line examination of Mr. Little's billing records.

4 **1. Plaintiff's Counsel's Billing Records**

5 Mr. Little's billing records, while detailed in certain respects, generally lack sufficient
6 descriptions of tasks which complicate consideration of the time spent by counsel. At first glance, three
7 problems are immediately apparent. First, every email received or sent by counsel was billed
8 separately and in six-minute increments which resulted in excessive billing for email. Email billing
9 entries, the vast majority of which were billed at 0.1 hours,⁵ account for approximately 1,788 out of the
10 2,453 billing entries accumulated during all proceedings prior to the appeal. This billing practice
11 resulted in excessive recordation of time which is easily ascertained when considering Mr. Little's
12 billing for receipt of automatic CM/ECF email notices regarding docket activity. These emails are
13 short and require little time to review, yet Mr. Little billed 83 separate times for receipt of these notices
14 for a total of 8.7 hours. The Court is very familiar with these automatic notice emails, and review of
15 each takes less than one minute.

16 Second, counsel's billing entries, particularly the more than 1,700 related to email, are not
17 documented or described in a way that show the subject or nature of the task. Many email
18 communications describe only the recipient with a generic subject making it impossible to tell whether
19 the time spent was reasonable, whether it was duplicative, or whether it was clerical in nature. While
20 counsel is not required to show how each minute of his time was spent, there has to be enough
21 information for the Court to review. Here, the vast majority of billing entries for email communication
22 are far too vague.

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25 ⁵ There is nothing suspect about billing in 0.1 hour increments, generally. However, billing for each and every email at 0.1 hours can, in the aggregate, create over-billing that does not reflect the time actually spent.

1 Third, underscoring the somewhat haphazardness of the time records, Mr. Little billed more
 2 than 24 hours of time on November 7 and 8, 2013. Factors contributing to this obvious over-billing
 3 include great numbers of 0.1 hour entries for email on a single day, many of which do not contain
 4 sufficient descriptions, and a large block-billed portion of time related to exhibits that appears to
 5 encompass a number of discrete tasks. These three problems are exemplified by Mr. Little's billing on
 6 November 8, 2013, which reflects the following entries:

7	Miller – Related case v. Schmitz – Complaint review	0.4
	Fax sent to Ron Calhoun re: Miller	0.1
8	Joint Jury Instructions file and review	0.2
	Miller Discovery Depo Statement	1.5
9	Plaintiff submission of joint Exhibit list-cvr	0.1
	Plaintiff Exhibit List and compile exhibits and revising and organizing	8.7
10	Plaintiff Exhibit List Filed	0.2
	Plaintiff Exhibit List – cvr filed	0.1
11	Plaintiff Discovery Depo Statement Filed	0.1
	File trial docs	0.7
12	Defendants Index of Trial Exhibits review	0.5
	Defendants Special Verdict Form review	0.6
13	Defendants Special Verdict Form – Cover review	0.1
	Defendants Proposed Jury Panel Voir Dire review	0.4
14	Def Witness List review	0.5
	Def Trial Brief review	0.2
15	Defendant Verdict Form Cover Sheet review	0.4
	Email Correspondence re: Fax sent to Ron Calhoun	0.1
16	Email Correspondence with Michael Johnson re: Miller v. Schmitz	0.1
	Email Correspondence with Darrell York re: Miller Trial Confirmed to Start 11/19	0.1
17	Email Correspondence re: Received Fax	0.1
18	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Darrell York re: Miller Trial Confirmed to Start 11/19	0.1
19	Meeting with Client, Lemoore and travel	4.2
20	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
21	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
22	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Darrell York re: Miller Trial Confirmed to Start 11/19	0.1
23	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
24	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
25	Email Correspondence with Darrell York re: Miller Trial Confirmed	

1	to Start 11/19	0.1
	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
2	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
3	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Daniel Wainwright re: Miller Settlement	
4	Conference	0.1
	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
5	Email Correspondence with Ryan Marshall re: Final Draft of	
	Joint Instructions	0.1
6	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Daniel Wainwright re: Miller Settlement	
7	Conference	0.1
	Email Correspondence with Daniel Wainwright re: Miller Settlement	
8	Conference	0.1
	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
9	Email Correspondence with Alex Chechelnik re: Fwd: Complaint	0.1
	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
10	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence re: Notice of E-Filing – Proposed Jury Instructions	0.1
11	Email Correspondence re Notice of E-Filing – Pretrial Statement	0.1
	Email Correspondence re Notice of E-Filing – Witness List	0.1
12	Email Correspondence re Notice of E-Filing – Trial Brief	0.1
	Email Correspondence re Notice of E-Filing – Proposed Voir Dire	0.1
13	Email Correspondence re Notice of E-Filing – Proposed Verdict	0.1
	Email Correspondence re Notice of E-Filing – Pretrial Statement	0.1
14	Email Correspondence re Notice of E-Filing – Exhibit List	0.1
	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
15	Email Correspondence with Patricia Piggee re: Miller Trial Confirmed to	
	Start 11/19	0.1
16	Email Correspondence with Carrie Woolley re Miller v. Schmitz	0.1
	Email Correspondence with Patricia Piggee re: Miller Trial Confirmed to	
17	Start 11/19	0.1
	Email Correspondence re: Notice of E-Filing – Exhibits List	0.1
18	Email Correspondence with ljoorders re: . . . proposed jury instructions and	
	Verdict Forms	0.1
19		
	Email Correspondence re Notice of E-Filing – Trial Brief	0.1
20	Email Correspondence re Notice of E-Filing – Witness List	0.1
	Email Correspondence re Notice of E-Filing – Proposed Voir Dire	0.1
21	Email Correspondence re Notice of E-Filing – Proposed Verdict	0.1
	Email Correspondence re Notice of E-Filing – Exhibit List	0.1
22	Email Correspondence with Ryan Marshall re: Miller v. Schmitz; Defendants	
	Special Verdict Form	0.2
23	Email Correspondence with Daniel Wainwright re: Miller – color 6-pack photo	
	Lineup	0.1
24	Review of Depo Summary of R. Silva	0.7
	Review of Depo Alvarez transcripts	0.5
25		

1 The total hours billed for November 8, 2013, is 25.4. On November 7, 2013, the day before,
2 Mr. Little billed 25.3 hours. (Doc. 135-1, pp. 44-45.)

3 This record keeping appears to be after-the-fact guesswork rather than a careful time-keeping
4 system.⁶ While Plaintiff maintains his counsel did not bill for phone calls or other tasks (Doc. 218,
5 3:24-4:4), none of these time expenditures and tasks are documented to reflect what time was written-
6 off or deducted.⁷ Failure to document certain time expenditures, while over billing for other time
7 expenditures does not translate into accurate timekeeping or establish a presumption of reliability.
8 With these billing issues in mind, the Court turns to examination of Mr. Little's billing records.

9 **2. Billing For All Email Communication**

10 Defendants have identified several categories of Mr. Little's billing they believe are non-
11 compensable due to their clerical nature. (See Doc. 156-1, Table 6(a)-6(m).) As such a large portion
12 of Mr. Little's billing entries are related to email, the Court first examines only the email
13 communications within the categories of tasks Defendants claim is clerical and non-compensable.

14 The Ninth Circuit has recognized that work that is "clerical in nature . . . should [be] subsumed
15 in firm overhead rather than billed" and is therefore not recoverable. *Nadarajah v. Holder*, 569 F.3d
16 906, 921 (9th Cir.2009); *see also Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989) (noting that time
17 expended on "purely clerical or secretarial tasks" may not be recovered under § 1988); *Trustees of*
18 *Constr. Indus. & Laborers Health and Welfare Trust v. Redland*, 460 F.3d 1253, 1257 (9th Cir. 2006)
19 (clerical work is not compensable at attorney or paralegal rates, and may only be billed separately at a
20 lower rate if the custom in the relevant community is to bill separately for such work). In particular,
21 time spent on tasks like "calendaring deadlines, confirming papers were filed, organizing files, and
22

23 ⁶ Despite Defendants' suggestions, Mr. Little's billing practices do not appear unethical nor do they seem like an attempt to
24 drive up billable hours; rather, the billing deficiencies are consistent with a busy solo practitioner who does not have an
organized or reliable system to track billable hours or sufficiently document the nature of the work performed.

25 ⁷ When writing off time potentially billable to a client, sound billing practices would include recording precisely how much
time on what tasks was "written off."

1 electronically filing documents" is not properly billable at an attorney or paralegal rate. *In re Mohsen*,
2 473 B.R. 779, 795 (N.D. Cal. 2012).

3 Defendants request elimination of all clerical time spent by Mr. Little including email
4 communications between Mr. Little and Defendants' counsel's secretaries, non-substantive email
5 communications with Defendants' counsel, email communication with court reporters, correspondence
6 regarding depositions, correspondence with document companies, email communication with court
7 staff, inter-office email communication, communications regarding Mr. Little's accounting and
8 invoicing on this case, email communication regarding service of subpoenas, and receipt of electronic
9 CM/ECF court notifications.

10 Plaintiff argues none of this work was purely clerical but required an attorney's involvement.
11 Plaintiff notes the 0.1 hour billing increments have been approved by the California Bar for minor tasks
12 such as email, and this was not an improper method of billing.

13 **a. Email Communication that is Purely Clerical is Excluded**

14 Defendants compiled a list of 83 time entries Mr. Little recorded for receipt of automatic
15 CM/ECF emails notifying him of docket activity. (Doc. 156-1, pp. 26-28.) Nearly all of these emails
16 were billed at 0.1 hours for a total of 8.7 hours. Receipt and review of these emails is entirely clerical
17 in nature, particularly as Plaintiff's counsel billed separately to review the substantive underlying
18 document, order, or minute order text. Thus, the 8.7 hours spent reviewing automatic email
19 notifications is excluded as clerical work not compensable at an attorney rate.

20 Defendants also claim that Plaintiff's counsel's time communicating with Court staff and court
21 reporters is purely clerical work that cannot be billed at an attorney rate. The Court agrees the 9.9
22 hours billed for email communications with Magistrate Judge Boone's Courtroom Deputy (CRD), the
23 undersigned's CRD, and the court reporters is clerical (Doc. 156-1, pp. 17-19, p. 22). *See Young v.*
24 *Geico Indem. Co.*, No. 08-00171 JMS/KSC, 2009 WL 3049640, at *8 (D. Haw. Sept. 23, 2009)
25 (communications with the court are clerical and not compensable at attorney rates). Likewise, the

1 email correspondence with document companies (2.1 hours, Doc. 156-1, p. 21 (summary)) is clerical as
2 are the emails related to issuance of subpoenas (1.6 hours, Doc. 156-1, p. 25 (summary)). *See Compass*
3 *Bank v. Morris Cerullo World Evangelism*, No. 13:CV-0654-BAS (WVG), 2015 WL 3442030, at *8
4 (S.D. Cal. May 28, 2015) (reducing billing entries due to a finding that "certain tasks were ministerial
5 and did not require an attorney to perform[,] " including drafting a revised subpoena, preparing
6 instructions for service, and phone calls and emails to reschedule deposition).

7 Email communications regarding depositions also appear clerical (0.9 hours, Doc. 156-1, p. 20).
8 Although Plaintiff's counsel is a solo practitioner and may not have secretarial support for these types
9 of tasks, there is nothing in the record to establish clerical tasks are not generally subsumed within an
10 attorney's hourly rate. Plaintiff argues that not only has the nature of law practice shifted such that
11 attorneys often perform this type of work, but also that these tasks are only partly clerical, not purely
12 so, and are reimbursable at an attorney hourly rate. However, there is no detail regarding these
13 communications to suggest that tasks such as coordinating with document preparation companies, court
14 reporters, or for service of subpoenas were more than ministerial and required an attorney to perform
15 them.

16 Plaintiff counsel's email communication with Defendants' counsel's secretaries (11.9 hours
17 accumulated as billing entries for email) also all appears clerical (Doc. 156-1, pp. 7-11), and this is
18 supported by Kathy Castillo's declaration and supporting documents establishing these communications
19 were entirely ministerial and did not require an attorney to perform them. (Doc. 155.) The fact that
20 Plaintiff's counsel may have been the only person in his office available for this work does not
21 transmute this communication into substantive work requiring an attorney.

22 Defendants identify a large number of miscellaneous billing entries they claim are clerical in
23 nature. (Doc. 156-1, p. 29.) As it pertains to email communications in this category, the billing entries
24 are obviously administrative or clerical in nature, or are bereft of detail regarding the sender/recipient
25 of the email and the substantive nature of the communication. Two representative samples include the

1 following: "Email correspondence re: Fax to Court Call," and "Email re: Scheduling Order." (Doc.
2 156-1, p. 29.) These email communications are purely clerical and should not be billed at an attorney
3 hourly rate. These miscellaneous email communications constitute 9.61 hours of billing, and will be
4 excluded.

5 Defendants also assert a number of Mr. Little's email communication with Defendants' counsel
6 was only clerical and not compensable. (*See* Doc. 156-1, pp. 12-15.) Upon review of the billing
7 entries, however, is not clear to the Court that this is purely clerical or ministerial communication, and
8 it will not be excluded as such. For calendaring or administrative tasks, it appears Mr. Little was in
9 regular contact with Defendants' secretaries. This tends to suggest email with Defendants' counsel was
10 at least partly substantive.

11 Defendants also assert inter-office email communications between Mr. Little and his staff are
12 purely clerical. (*See* Doc. 156-1, p. 23.) It is not apparent from the descriptions of the email
13 correspondence that this work is entirely clerical: some of the communications relate to deposition
14 summaries, which is not necessarily ministerial. Mr. Little's time in this category will not be excluded
15 as clerical.

16 Defendants identify 20 post-trial email communications between Mr. Little and Darrell York,
17 Plaintiff's police practices expert, which Defendants assert is excessive and lacks any meaningful
18 description. (Doc. 156-1, p. 5.) The nature of the email communication is not described, but merely
19 shows multiple emails with Darrell York regarding the Miller case. The time is not clerical, but as with
20 most of Mr. Little's email billing entries, it is poorly described and billed in a manner that is excessive.
21 While this time will not be eliminated as clerical in nature, it will be addressed below as part of the
22 inflationary billing with regard to email communication.

23 **b. Email Communication with the Media**

24 Defendants claim Plaintiff is not entitled to fees for the time Mr. Little spent communicating
25 with the media about the case, and they cite several cases where courts have declined to award

1 attorneys' fees for contacts with the press as the type of activity an attorney does at his or her own
2 expense. *See, e.g., Gates v. Gomez*, 60 F.3d 525, 535 (9th Cir. 1995) (finding district court abused
3 discretion in awarding time for media contact).

4 Plaintiff argues a court has discretion to award time spent on publicity that is directly and
5 intimately related to the success of the representation, and he maintains his counsel did not contact the
6 media or the press until he was specifically asked to do so by Plaintiff. Plaintiff contends a specific
7 item of his general damages was the shame he felt at being arrested; a necessary part of "clearing" his
8 name was announcing that the officer who had caused him to be charged criminally did so in violation
9 of his constitutional rights. According to Plaintiff, the limited press contact his counsel had at
10 Plaintiff's request after the verdict was a key aspect of restoring Plaintiff's good name, given the reach
11 of media announcements. Plaintiff argues publicizing the verdict fostered his litigation goal and has
12 been considered compensable by other courts. *United States v. San Francisco*, 748 F. Supp. 1416,
13 1423 (N.D. Cal. 1990) (publicity efforts narrowly focused on fostering litigation goal of client is
14 compensable)).

15 While the Court agrees that the media contact post-verdict was substantively related to the
16 merits of the case for the reason Plaintiff articulates, and therefore is awardable in this factual setting,
17 the email correspondence of January 30, 2012, is pre-verdict and would not have been made with the
18 goal of restoring Plaintiff's reputation. Of the 2.6 hours identified in Plaintiff's counsel's billing records
19 as email correspondence with the media (*see* Doc. 156-1, p. 4), only 0.1 hour is non-compensable.

20 **c. Email Communication for Accounting, Invoicing, and Billing**

21 Accounting, budget, or billing communications are not tasks properly billed to the client. While
22 this may be work requiring an attorney to complete and is not clerical, it is not traditionally time that is
23 paid for by the client, but is overhead work that is subsumed within the attorney's hourly rate. Here,
24 email correspondence related to accounting or billing amounted to 2.5 hours of time (Doc. 156-1, p.
25 24), and this will be excluded as part of overhead subsumed within the hourly rate. *See Shorter v.*

1 *Valley Bank & Trust Co.*, 678 F. Supp. 714, 725 (N.D. Ill. 1988) ("most lawyers do not bill their fee-
2 paying clients for hours spent preparing bills"); *Hensley*, 461 U.S. at 434 ("Hours that are not properly
3 billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority."
4 (internal citation and quotation marks omitted)).

5 **d. Email Communication Lacking Any Description**

6 Defendants identify a large block of Mr. Little's time spent on email communications that lacks
7 any description whatsoever. Specifically, over 40 emails were billed as "Email correspondence re:
8 Miller Case." (Doc. 156-1, p. 35.) This type of billing entry does not meet counsel's burden to show
9 how time was spent, and there is so little detail the Court cannot determine whether it was reasonable.
10 *Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 n. 8 (9th Cir. 1987) ("It is not sufficient for prevailing
11 counsel to opine that all of the time claimed was usefully spent, and the district court should not
12 uncritically accept counsel's representations concerning time expended."). Therefore, 5.1 hours of time
13 spent in unspecified email communication is excluded for inadequate detail. *Hensley*, 461 U.S. at 433
14 ("Where the documentation of hours is inadequate, the district court may reduce the award
15 accordingly.").

16 **e. Email Communications Unrelated to the Case**

17 Defendants argue that 5 email communications in February 2012 regarding Plaintiff's attempt to
18 purchase a firearm are unrelated to the case and non-compensable. (Docs. 153, 28:9-16; 156-1, p. 33.)
19 Plaintiff argues his possible exclusion from gun ownership as a result of his false arrest and malicious
20 prosecution by Defendants was an element of the possible damages that needed to be assessed. (Doc.
21 159, 24:17-21.) For this reason, the communication appears relevant to a substantive issue in the case
22 and thus is not excludable as "unrelated."

1 **f. Summary of Non-Compensable Email Time**

2 The following email correspondence was excluded as non-compensable either because it was
3 purely clerical and should have been subsumed by the hourly billing rate, or it was so inadequately
4 detailed, the nature of the task and the reasonableness of the time it took to perform is unknown:

5 Email from CM/ECF E-Filing System	8.7 hours
Communications with Eastern District Staff	1.9 hours
6 Email Communication with court reporters	8.0 hours
Email Correspondence with document companies	2.1 hours
7 Email Communications regarding subpoenas	1.6 hours
Email Communication regarding depositions	0.9 hours
8 Email Communication with Defendants' Counsel's Secretaries	11.9 hours
Miscellaneous Email Communication	9.61 hours
9 Email to Media	0.1 hours
Email re Accounting and Invoicing	2.5 hours
10 Email Lacking Description	5.1 hours
Total	52.41 hours

11
12 **g. Reduction of Remaining Email Billing as Excessive**

13 Having excluded time spent on email communication that is non-compensable or excluded
14 because it was not documented sufficiently, the Court turns to consider the large volume of remaining
15 time spent on email that has occurred as a result of the practice for billing 0.1 hour for each email sent
16 or received. Due to the generally vague descriptions of almost all email communications, the Court is
17 unable to determine whether each email communication actually required 6 minutes of time. Given the
18 manner in which Mr. Little recorded time related to automatic e-filing notices, email with Court staff,
19 and email with Defendants' counsel's secretaries, it is clear most of these 0.1 email billing entries did
20 not require 6 minutes of time. The e-filing email notices are an appropriate bellwether for considering
21 the reasonableness time spent on email communication in general. Not only is the Court in a position
22 to evaluate accurately the time needed to review these email notices, all other email was recorded in the
23 same manner as the automatic e-filing notice emails – the time spent on multiple emails per day was
24 not considered as a whole to accurately reflect the actual time expended.

1 The e-filing notices require at most one minute to receive and to read – and that is a generous
2 estimate. There were 83 automatic email notices generated that the Court can identify as billed by
3 Plaintiff's counsel, which accounted for 8.7 hours of time. These 83 emails should only have taken 1
4 minute to open and read, thus the collective time spent would only have been 1.4 hours, not 8.7. Only
5 16 percent of the total billed reflects the actual time spent on these emails. The Court therefore applies
6 that percentage to the remainder of the email correspondence billed that has not already been deducted
7 as non-compensable at an attorney rate. For all work performed before the District Court prior to
8 appeal, Plaintiff billed 207.8 hours for email. After subtracting 52.41 hours excluded above, 16 percent
9 of the remaining 155.39 hours spent on email will be awarded, which is 24.86 hours (*i.e.*, a 130.53 hour
10 reduction).

11 While this is a significant reduction of counsel's time spent on email correspondence, the billing
12 records support such a reduction. First, it is proportional to the excess billing for receipt of e-filing
13 notices. Second, the billing for email was without any apparent consideration for the actual time spent
14 on the communications as a whole. For example, on January 25, 2013, counsel emailed or received
15 email from Julie Miller 13 times, but there is almost no description of the nature of that email
16 correspondence and it is hard to imagine, particularly in view of how time spent reviewing e-filing
17 notices was billed, that 13 emails took an aggregate 1.3 hours to review or send. Had these
18 communications taken such a large amount of time, the Court would expect a description to corroborate
19 the substantive nature of the email. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000)
20 (holding that a district court may reduce hours to offset "poorly documented" billing); *In re Wash. Pub.*
21 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (party petitioning for attorney's fees
22 bears the burden of submitting detailed time records justifying hours claimed to have been expended).
23 This lack of description coupled with the practice of billing for each email sent or received has resulted
24 in excessive hours claimed for time spent reviewing or sending email. It is also clear this billing
25 practice contributed to Mr. Little twice billing more than 24 hours in a single one-day period.

1 In sum, a 52.41-hour reduction is made for email communications that were clerical, poorly
2 documented, or not compensable; additionally, a 130.53-hour reduction for time spent on all other
3 email communication is warranted due to overuse of 0.1 hour entries for email that was also poorly
4 documented. This is a reduction of 182.94 hours of the total 207.8 hours billed for email
5 communication prior to the appeal.

6 **3. Non-Email Billing Entries**

7 **a. Clerical Tasks Not Awardable**

8 As with email communication regarding clerical tasks, Defendants identified several categories
9 of billing for other types of tasks they argue are clerical. Defendants identified tasks concerning
10 depositions that appear clerical such as "Miller Depo Ex Scan 0001," "Miller Witness Depo Fee ck
11 2/28/13," "filed p.o.s. for depositions," "Calhoun Fax re Pre Depo," "Callanan Depo Expense," and
12 "Provini Depo – hotel bill review." (Doc. 156-1, p. 20.) The time billed for non-email-related tasks in
13 this category was 1.1 hours, and it will be excluded as clerical work that should have been subsumed in
14 counsel's hourly rate.

15 Defendants also claim 10.7 hours of Mr. Little's time was spent on miscellaneous clerical
16 activities such as faxing, calendaring dates, and filing documents. (Doc. 156-1, pp. 29-32.) Clerical
17 work such as copying and scanning, mailing, and organizing and tabbing exhibits should not be billed
18 to clients; rather, these tasks should be covered or subsumed by an attorney's hourly rate, just as are the
19 costs of overhead. *Leuzinger v. County of Lake*, C 06–0398 SBA, 2009 WL 839056, at *4 (N.D. Cal.
20 March 30, 2009).

21 Several entries Defendants list in this category do not appear entirely clerical, such as reviewing
22 the pre-trial order (0.9 hours), reviewing a settlement conference statement on April 9, 2013 (0.5
23 hours), and reviewing the scheduling order (0.5 hours). The rest of the time identified by Defendants in
24 this category involve clerical tasks or the description of the work appears purely clerical. Therefore,
25 8.8 hours of Mr. Little's time spent on non-email miscellaneous clerical activities will be excluded.

1 **b. Accounting, Invoicing, and Budgeting**

2 As discussed above, time spent maintaining time records, budgeting, or accounting are not
3 properly billed to one's client, and cannot, therefore, be properly billed to an adversary pursuant to
4 statutory authority. *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980). Here, beyond email
5 correspondence in this category (which has already been excluded), Defendants claim Mr. Little spent
6 4.7 hours on accounting and case budgeting. (Doc. 156-1, p. 24.) The Court agrees this is not
7 reimbursable at an attorney rate. Even the preparation of a trial budget in September 2013 does not
8 appear related to a settlement demand or a substantive damages issue; this time is excluded.

9 **c. Vaguely Documented Discovery Tasks**

10 "The party requesting fees for [attorney] work must submit evidence documenting the hours
11 claimed, and if the documentation is inadequate, or the claimed hours appear 'excessive, redundant, or
12 otherwise unnecessary,' the court should reduce the award accordingly." *Webb v. Bd. of Educ. of Dyer*
13 *Cnty., Tenn.*, 471 U.S. 234, 253 n. 16 (1985) (Brennan, J., concurring in part and dissenting in part)
14 (citation omitted). An attorney "is not required to record in great detail how each minute of his time
15 was expended," *Fischer*, 214 F.3d at 1121 (quoting *Hensley*, 461 U.S. at 437 n. 12), but the attorney
16 should identify "the general subject matter of his [or her] time expenditures," *id.* (quoting *Davis v. City*
17 *& Cnty. of S.F.*, 976 F.2d 1536, 1542 (9th Cir. 1992), *vacated on other grounds*, 984 F.2d 345 (9th Cir.
18 1993)) (internal quotation mark omitted).

19 As repeatedly noted, a lack of meaningful descriptions of various tasks performed creates a
20 problem in reviewing the reasonableness of Mr. Little's time entries. On June 29, 2012, counsel billed
21 time for compiling and organizing various initial disclosure documents as well as drafting Plaintiff's
22 initial disclosures. These tasks are important and should take time to carefully complete, but there is no
23 description indicating an approximate number of documents or materials reviewed. Without a general
24 description of the volume or nature of the initial disclosures, it is impossible for the Court to assess the
25 reasonableness of the time spent on this activity. The same lack of description makes other discovery

1	tasks impossible to assess for reasonableness or determine how much time was spent on discrete tasks		
2	billed together:		
3	6/29/12	Compiling and Organizing various ID documents	3.7
	6/29/12	Plaintiff Initial Disclosures draft, revise & finalize	6.3
4	9/3/12	Drafting, revising & finalizing discovery responses and documents produced	7.2
5	9/9/12	Miller Discovery Requests drafts	2.8
	11/1/12	Review defense discovery responses I-940	3.1
6	12/5/12	Silva Discovery Responses	1.2
	12/5/12	Silva Discovery Docs produced Hanford PD	0.9
7	12/5/12	Silva Docs Discovery	1.8
	12/15/12	Miller's Request for Production of Docs, Set No. two draft, issue	2.7
8	12/15/12	Plaintiff Req. for Production of Docs, set two	1.3
	12/21/12	Add'l Suppl discovery – Ivan Hurd redaction, review and serve	1.8
9	12/31/12	Plaintiff Request for Production of Docs Set No. Two draft and issue	1.4
	1/28/13	Suppl discovery compile and serve	1.4
10	2/7/13	Miller Docs produced – Kings County 2-7-13 review	2.1
	4/12/13	Miller Discovery Responses Suppl	1.3
11	4/12/13	Plaintiff Response to Special Interrogatories Set (2) – Ex B draft and revise	1.6
12		Total	40.6
13			

14 These time entries are not discrete tasks, but implicate several tasks. As it pertains to reviewing
15 "defense discovery response I-940" on November 1, there is no indication what type or how much
16 discovery was reviewed, and the amount of time billed suggests more than simple review. In the
17 exercise of discretion, a 10 percent reduction (4.06 hours) is made with regard to the vaguely
18 documented time spent on multiple discovery tasks. *See Gonzalez v. City of Maywood*, 729 F.3d 1196,
19 1203 (9th Cir. 2013) (finding that a "district court can impose a small reduction, no greater than 10
20 percent—a 'haircut'—based on its exercise of discretion and without a more specific explanation"
21 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)) (internal quotation mark
22 omitted)).

23
24
25

1 **d. Block Billing Resulting in Excessive Billing**

2 **(i) Block Billing for Trial Preparation**

3 As noted above, Mr. Little's billing records are flawed in that at least two days record more than
4 24 hours of work, and from November 7 through November 27, 2013, an extraordinary amount of
5 hours were billed. While this time period was just prior to and includes the trial – an extremely busy
6 time for a trial lawyer – Mr. Little billed 246.5 hours between November 13 and November 27, which
7 amounts to an average of 19 hours billed per day. This appears attributable both to the excessive email
8 billing practice and to large block-billed periods of time for unspecified "trial prep." Although
9 following remand Mr. Little reduced some of his "trial prep" time between November 18, 2013, and
10 November 27, 2013 by 50% for a 45.5-hour reduction, there are still large block-billed segments of
11 time that necessarily involve several tasks but where no meaningful task description is provided.

12 "Block billing" is "the time-keeping method by which each lawyer and legal assistant enters the
13 total daily time spent working on a case, rather than itemizing the time expended on specific tasks."
14 *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir. 2007). Block billing also involves billing
15 a large block of time for two or more tasks without delineating how time was spent on any specific,
16 individual tasks.

17 Because the "fee applicant bears the burden of documenting the appropriate hours expended in
18 the litigation and must submit evidence in support of those hours worked," the Court may reduce hours
19 that have been block-billed "because block billing makes it more difficult to determine how much time
20 was spent on particular activities." *Id.* at 948. To impose a reduction, however, the Court must
21 "explain how or why . . . the reduction . . . fairly balance[s] those hours that were actually billed in
22 block format." *Id.* A reduction for block-billed hours may not be appropriate if "individual tasks are
23 specified" and the entries are "detailed enough for the Court to assess the reasonableness of the hours
24 billed." *Campbell v. Nat'l Passenger R.R. Corp.*, 718 F. Supp. 2d 1093, 1103 (N.D. Cal. 2010).

1 The Court has no doubt Mr. Little spent many hours preparing for trial. However, the
2 descriptions of the work performed during this time are so minimal, accurate evaluation is hampered.
3 For example, on November 13, 2013, counsel spent 4.7 hours on "exhibit binders—organize and prep
4 for trial," and then spent 7.8 hours on "trial prep" on the same day. This appears somewhat duplicative,
5 but it is also difficult to determine what time was actually spent on which tasks and whether the time
6 outlay was reasonable. Also on November 13, counsel billed a total of 23.9 hours, which the Court
7 finds implausible. As counsel reduced his "trial prep" between November 18, 2013, and November 27,
8 2013, by 50 percent, the Court likewise reduces the 7.8 hours spent on "trial prep" and the 4.7 hours
9 spent on organizing exhibit binders to prepare for trial expended on November 13, 2013. When a 50%
10 reduction (6.25 hours deducted) is applied to these two block-billed entries, the daily total billing of
11 23.9 hours is reduced to a more reasonable 17.65 hours.

12 Similarly, "trial prep" time entries on November 14 through 17 will be reduced by 30 percent
13 for lack of a description of the discrete tasks involved. *See Welch*, 480 F.3d at 948. In sum, from these
14 5 days between November 13 through November 17, a total of 20.2 hours⁸ is eliminated for block
15 billing "trial prep" time to reduce the time recorded to a reasonable amount.

16 **(ii) Block Billing For Opposing Summary Judgement Motion**

17 Defendants claim Plaintiff's counsel spent an excessive amount of time drafting an opposition
18 brief to Defendants' Motion for Summary Judgment. Counsel spent 66.9 hours researching and drafting
19 the brief in opposition of Motion for Summary Judgment. Defendants argue this was excessive for an
20 attorney with more than 20 years of experience in a relatively straight-forward case. Defendants assert
21 that 40 hours of time would be reasonable for an attorney with Mr. Little's background and experience,
22 and the Court should reduce the fee request by 26.9 hours.

23
24
25 ⁸ 11/13/13 = 6.25 hour reduction; 11/14/13 = 3.69 hour reduction; 11/15/13 = 2.31 hour reduction; 11/16/13 = 4.05 hour
reduction; 11/17/13 = 3.9 hour reduction.

1 Plaintiff argues the motion for summary judgment itself was 212 pages in length, including
2 exhibits; Plaintiff's opposition consisted of 243 pages, including exhibits; and another 1,626 pages of
3 deposition transcripts were lodged. Plaintiff notes that, in opposition to the motion, Plaintiff had the
4 burden of establishing material factual disputes wherever they existed, and thus was required to comb
5 the record to present these factual disputes.

6 Having considered the issues addressed, the number of disputed facts, and the evidence
7 involved, it is difficult to conclude that the opposition brief would require nearly 70 hours, and review
8 of the billing record does little to illuminate how time was spent on the various tasks involved in
9 drafting the opposition. The billing for this time is recorded in blocks:

<u>Description</u>	<u>Time</u>
Notes re: SJM opposition draft and revise	1.7
SJM Opposition research	5.3
SJM Opposition draft	9.7
SJM Opposition draft and research	11.4
SJM Opposition draft and research	10.3
SJM Opposition draft and research	13.5
SJM Opposition finalize and file	15

14
15 There were many discrete tasks involved in drafting this motion, such as reviewing deposition
16 transcripts and evidence for disputed factual issues, drafting the statement of disputed facts, and
17 coordinating the exhibits with the statement of disputed facts, but none of the time on these tasks was
18 delineated separately. As such, this is a form of block billing containing minimal description of the
19 tasks involved, and does not show why this opposition brief took the time it did in light of the issues
20 briefed and the number of disputed facts. The Ninth Circuit has recognized that block billing may
21 increase time spent by as much as 30 percent. *See Welch*, 480 F.3d at 948 (accepting California State
22 Bar's Committee on Mandatory Fee Arbitration report that block-billing "may increase time by 10% to
23 30%," and affirming reduction within that range). As such, the Court finds it is appropriate to reduce
24 the number of hours spent by 10 percent (6.69 hours) and award 60.21 hours. This resulting amount of
25 time is reasonable considering the issues addressed in the opposition brief and the supporting materials.

1 (iii) Block Billing Work on Motions in Limine

2 The same type of block-billing with minimal or vague task descriptions is true of Mr. Little's
3 billing with regard to time spent on motions in limine, making this time difficult to assess:

4	9/27/13	List of Motions in Limine notes draft	3.6
	9/29/13	MIL research	4.9
5	10/5/13	MIL draft and revise	6.5
	10/6/13	MIL draft and revise	8.0
6	10/7/13	MIL draft and research and revisions	10
	10/8/13 ⁹	MIL draft and finalize and file	13
7	10/9/13	MIL opposition draft and research and revise	10
	10/12/13	Opp. To Def. MIL further research and drafting	9.5
8	10/13/13	Opp. To Def. MIL drafting and revise	11.5
	10/14/13	Opp. To Def. MIL finalize and file	10.3

9
10 Plaintiff filed 14 motions in limine, one with several discrete subparts. However, when
11 considering the motions filed and the evidentiary issues addressed, the block billing gives no indication
12 how much time was spent on any particular portion or motion, or how much time was spent researching
13 particular issues. Given this lack of detail, it is difficult to determine whether 46 hours spent
14 researching and writing these 14 motions was reasonable.

15 Similarly, the time spent on the opposition to Defendants' eight motions in limine is also block
16 billed with vague task descriptions. In total, Plaintiff spent 87.3 hours on drafting motions in limine
17 and an opposition brief. Again, given that block billing may increase time by up to 30 percent, this
18 time will be reduced by 20 percent to account for what appears to be somewhat excessive time. *Welch*,
19 480 F.3d at 948. Therefore, 17.46 hours are reduced for block billing.

20 e. Duplicative Billing

21 Another factor eroding the Court's confidence in counsel's billing records is the repeated
22 duplicative entries. The following 0.1 hour billing entries were generated in response to extremely
23 short minute orders from the Court (on each day, only one short minute order was issued):

24 1/4/13 Review minute order issued

25 ⁹ Although the billing records indicate Plaintiff's motions in limine were filed on October 8, 2013, they were actually filed on October 9.

1 1/4/13 Magistrate Order of Reassignment
 1/4/13 Email Correspondence re: Notice of E-Filing – Order
 2 (Doc. 135-1, p. 17.)

3 4/29/13 Email Correspondence re: Notice of E-Filing – Miller v. Schmitz et al Minute Order
 4/29/13 Review minute order
 4 4/29/13 Review minute order
 (Doc. 135-1, p. 33.)

5 5/1/13 Email Correspondence re: Notice of E-Filing – Miller v. Schmitz et al In chambers
 6 Conference Minutes
 5/1/13 Review minute order
 7 5/1/13 Review minute order
 (Doc. 135-1, p. 33.)

8 6/5/13 Review minute order
 9 6/5/13 Email Correspondence re: Notice of E-Filing – Minute Order
 6/5/13 Review minute order
 10 (Doc. 135-1, p. 35.)

11 7/22/13 Email Correspondence re: Notice of E-Filing – Minute Order
 7/22/13 Review minute order
 12 7/22/13 Review minute order
 (Doc. 135-1, p. 36.)

13 Thus, 0.5 hours recorded for reviewing the same minute order twice on these five days are
 14 eliminated as duplicative.

15 **f. Billing for Travel Time**

16 Defendants contend Plaintiff's time traveling to depositions should be reduced by 50 percent.
 17 Courts have sometimes reduced hours billed by attorneys for time spent traveling,¹⁰ but in the Eastern
 18 District, courts have generally compensated attorneys at their full hourly rate for traveling time. *See*,
 19 *e.g.*, *Jones v. Cnty. of Sacramento*, No. CIV S-09-1025 DAD, 2011 WL 3584332, at *15 (E.D. Cal.
 20 Aug.12, 2011) (awarding three hours of travel time from Sacramento to San Jose and back to conduct
 21 deposition at full rate); *Jones v. McGill*, No. 1:08-CV-00396-LJO-DLB, 2009 WL 1862457, at *3
 22 (E.D. Cal. June 29, 2009) (awarding fifteen hours of travel time for meetings with experts and

23 _____
 24 ¹⁰ *See In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.1994) (affirming reduction in travel
 25 time award by fifty percent due to the inevitable "distractions associated with travel" that likely reduced attorneys'
 effectiveness); *Alnutt v. Cleary*, 27 F. Supp. 2d 395, 400 (W.D.N.Y.1998) (reducing travel time by fifty percent); *Hiram C.*
v. Manteca Unified Sch. Dist., No. S-03-2568 WBS KJM, 2004 WL 4999156, at *2 (E.D. Cal. Nov.5, 2004) (award for
 travel time at less than fifty percent of ordinary hourly rate).

1 witnesses at full rate); *Davis v. Sundance Apartments*, No. CIV. S-07-1922 FCD GGH, 2008 WL
2 3166479, at *5 (E.D. Cal. Aug.5, 2008) (awarding six hours of travel time at full rate). Thus, because
3 the amount of time spent Mr. Little spent traveling is reasonable, and the depositions to which he
4 traveled were necessary to the case, the Court will award compensation of travel time at Mr. Little's full
5 hourly rate. No reduction in the traveling time is warranted.

6 **g. Time Unrelated to the Case**

7 Defendants note Mr. Little billed 0.2 hours for time spent conducting an Aladdin Bail Bonds
8 Document/Receipt review on June 29, 2012, which they claim is unrelated to this litigation. (Doc. 156-
9 1, p. 33.) Plaintiff does not explain how this time is relevant to the litigation nor is its relevance
10 obvious in the task description.¹¹ This 0.2 hours will be excluded as unrelated to the litigation.

11 **4. Supplemental Fee Request**

12 Defendants contend Plaintiff's counsel's 20.1 hours spent drafting Plaintiff's opposition to
13 Defendants' motion for a new trial is excessive and unreasonable. Defendants argue Mr. Little is an
14 experienced practitioner and the case was not complex; thus, an opposition should have only taken 10
15 hours. (Doc. 217, 28:11-22.) Counsel's supplemental billing suffers the same weakness regarding
16 block billing as the hours billed in opposing Defendants' motion for summary judgment. The billing
17 descriptions are extremely minimal and are unhelpful in assessing whether the time spent was
18 reasonable. Good finished product, which is descriptive of Plaintiff's counsel's work, often belies the
19 time spent creating it. When the sheer amount of hours spent is greater than expected, descriptive
20 billing records aid in spotting where extra time was required. This does not mean the billing records
21 need to detail every second of time, but large block-billed entries with descriptions such as "draft" or
22 "research" a motion are unhelpful. The 20.1 hours spent is only slightly greater than expected when
23 considering the issues briefed, and thus only 10 percent will be reduced to account for block billing that

24
25 ¹¹ Email correspondence in this category was discussed *supra*; time spent on those email tasks was reduced but not excluded.

tends to inflate the amount of hours expended. *See Welch*, 480 F.3d at 948. Thus, 2.01 hours will be reduced from time spent opposing Defendants' motion for a new trial.

D. Time Spent on Appeal Proceedings

1. Email Communications

The hours recorded after the appeal was initiated appear to bill for each and every email sent or received. This practice, as noted above, has resulted in an over-billing for time spent on email in this case. Considering the billing for e-filing notices where only 16 percent of the time recorded reflected actual time spent, the email billing in short 0.1 hour increments will be reduced by 84 percent.

There were 64 billing entries recording 0.1 hours for time spent corresponding by email for a total of 6.4 hours. (Doc. 211, pp. 89-94.) This will be reduced by 5.3 hours.

2. Appellate Mediation Brief

Defendants argue the 6 hours Mr. Little spent on the appellate mediation brief was excessive. As the tasks involved are block-billed with no description of how many issues were covered, what amount of time was spent on research, or the length of the brief, this block-billed entry will be reduced by 20 percent to account for the increase in the amount of time due to block billing. *See Welch*, 480 F.3d at 948. Thus, this billing entry will be reduced by 1.2 hours.

3 Appellate Briefing

Large blocks of time were billed for the tasks involved in the appellate briefing. The Court has reviewed the appellate briefs submitted. Many of these issues were researched and briefed in conjunction with Plaintiff's motion for reconsideration of the original order regarding Plaintiff's motion for attorneys' fees.

8/1/14	Review of trial documents for excerpts of record	5.0
8/10/13	Research for Appellant's Opening Brief	4.0
8/12/14	Draft Appellant's Opening Brief	6.0
8/29/14	Research and continued drafting Appellant's Opening Brief	5.0
9/10/14	Continued drafting of Appellant's Opening Brief	6.0
9/21/14	Finalize Appellant's Opening Brief	4.2
9/22/14	Appellant Opening Brief finalized and submitted	1.2

1		Total	31.4 hours
2	12/24/14	Research for Appellant's Reply Brief	5.0
3	12/25/14	Draft Appellant's Reply Brief	9.2
3	12/26/14	Edit, finalize and submit Appellant's Reply Brief	5.2
4		Total	19.4 hours

5 The total hours spent on these briefs was 50.8 hours. This is not necessarily unreasonable but
6 appears excessive when considering the lack of description for the tasks involved, the final briefs
7 submitted, and the overlap in research from the briefs presented during the post-trial proceedings. As
8 repeatedly noted, counsel's billing practice makes it exceedingly difficult to assess the reasonableness
9 of the time spent, even when the final brief can be reviewed and the substantive issues considered.
10 There is no delineation between what time was spent researching as opposed to drafting or what issues
11 were more time consuming to research. The Court therefore reduces these block-billed hours by 10
12 percent; 5.08 hours will be reduced. *See Welch*, 480 F.3d at 948.

13 **4. Corrected Reply Brief**

14 Defendants assert Plaintiff's counsel's time spent correcting a mistake in the appellate reply brief
15 should be eliminated. Counsel spent 1.6 hours drafting and submitting a corrected reply brief. This
16 time will be eliminated. *McCauley v. Colvin*, No. 2:15-cv-0122-JCR, 2015 WL 6031429, at * 4 (W.D.
17 Wash. Oct. 15, 2015) (finding unreasonable hours billed correcting mistakes in briefing).

18 **5. Summary of Time Reductions for Appellate Proceedings**

19 Of the 118.2 hours spent on the appeal, the Court finds reasonable 105.02 hours after the
20 following 13.18-hour reduction:

21	Email Correspondence	5.3 hours
22	Mediation Brief	1.2 hours
22	Appellate Briefing	5.08 hours
23	Corrected Reply Brief	1.6 hours
23	Total	13.18 hours

24
25

1 **E. Time Spent on Post-Appeal Remand Proceedings**

2 Plaintiff submitted no billing sheet for the 8.0 hours requested for time spent on the remand
3 activities. Defendants do not oppose this time expenditure. Given the minimal number of hours
4 requested for the two briefs Plaintiff filed regarding attorneys' fees in addition to the time spent
5 litigating discovery of Defendants' billing records before the Magistrate Judge, the Court will award
6 this time despite a lack of billing records showing the time spent on the various tasks engaged in
7 proceedings following remand.

8 **F. Summary of All Reductions**

9 For all the reasons stated above, Mr. Little's hours spent on the litigation will be reduced in the
10 following aspects:

<u>Work Prior to Appeal</u>	
Billing Category	Time Reduced
<u>Email</u>	182.94 Hours
<u>Non-Email</u>	
<i>Related to Depos</i>	1.1 hours
<i>Misc. Clerical</i>	8.8 hours
<i>Accounting, Invoice</i>	4.7 hours
<i>Vague Billing</i>	4.06 hours
<i>Block Billing</i>	44.35 hours ¹²
<i>Duplicative Billing</i>	0.5
<i>Unrelated to Case</i>	0.2
<u>Supplemental Fees</u>	
<i>Block Billing</i>	2.01 hours
Total Reduction	248.66
Total Billed	1,154.31¹³
Already Paid	459.88
Sub-Total Award	445.77 hours at \$350/hr = \$156,019.50
<u>Appellate Work</u>	
Billing Category	Time Reduced
<i>Email (excessive)</i>	5.3

24 ¹² Block-billing reductions include 20.2 hours ("trial prep"); 6.69 hours (MSJ); 17.46 hours (MILs).

25 ¹³ 1,149.71 hours (Doc. 135-1, pp. 1-58) + 50.1 hours (Doc. 159-1) = 1,199.81 – 45.5 hours (Doc. 211, pp. 84-87) = 1,154.31 hours.

<i>Mediation Brief</i>	1.2 hours
<i>Appellate Briefs</i>	5.08 Hours
<i>Corrected Reply Brief</i>	1.6 Hours
Total Reductions	13.18 hours
Total Billed	118.2 hours
Sub-Total Award	105.02 hours at \$375/hr \$39,382.50
<u>Remand Work</u>	No Reductions
Total Billed	8.0 hours at \$400/hr
Sub-Total Award	\$3,200
Total Award	\$198,602

IV. CONCLUSION AND ORDER

For the reasons set forth above, Mr. Little's hours have been reduced by 261.84 hours as excessive, duplicative, poorly documented, or not compensable at an attorney hourly rate. Plaintiff has already been compensated for 459.88 hours of the 1,280.51 billed. After subtracting the award already paid (459.88 hours at \$350/hr), the total award is \$198,602.

Accordingly, IT IS HEREBY ORDERED that Plaintiff is awarded \$198,602 in attorneys' fees, which is in addition to the amount already paid pursuant to the Court's original order on February 18, 2014 (Doc. 163).

IT IS SO ORDERED.

Dated: February 15, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE