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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JASON EUGENE DEOCAMPO; JESUS
SEBASTIAN GRANT; and JAQUEZS
TYREE BERRY,

Plaintiffs,

v.

JASON POTTS, individually and
in his capacity as a Vallejo
police officer; JEREMY
PATZER, individually and in
his capacity as a Vallejo
police officer; ERIC JENSEN,
individually and in his
capacity as a Vallejo police
officer; and DOES 1 through
25, inclusive,

Defendants.

CIV. NO. 2:06-1283 WBS CMK
MEMORANDUM AND ORDER RE:
ATTORNEY'S FEES AND COSTS

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Plaintiffs Jason Eugene Deocampo, Jesus Grant, and
Jaquezs Berry brought this action against defendants Jason Potts,
Jeremy Patzer, and Eric Jensen arising out of alleged police
misconduct. After a thirteen-day trial, the jury found that

1 Potts and Jensen had used excessive force in the course of
2 arresting Deocampo and awarded Deocampo \$50,000 in damages. The
3 jury did not award damages to Grant or Berry. Plaintiffs now
4 seek attorney's fees and expenses under 42 U.S.C. § 1988, and
5 defendants seek to recover costs pursuant to Federal Rule of
6 Civil Procedure 54(d) and Eastern District Local Rule 292.

7 I. Attorney's Fees

8 Section 1988 permits the court, in its discretion, to
9 award reasonable attorney's fees to a prevailing party in an
10 action under 42 U.S.C. § 1983. 42 U.S.C. § 1988(b). A
11 "prevailing party" is one who succeeds on any significant issue
12 in the litigation, resulting in a "material alteration of the
13 legal relationship of the parties." Tex. State Teacher's Ass'n
14 v. Garland Indep. Sch. Dist., 489 U.S. 782, 792-93 (1989). While
15 defendants do not dispute that Deocampo was a prevailing party or
16 that he is entitled to attorney's fees under § 1988, they dispute
17 the size of the fee award plaintiffs request.

18 Courts typically determine the amount of a fee award
19 under § 1988 in two stages. First, courts apply the "'lodestar'
20 method to determine what constitutes a reasonable attorney's
21 fee." Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th Cir.
22 2013) (citations omitted). Second, "after computing the lodestar
23 figure, district courts may adjust that figure pursuant to a
24 variety of factors." Id. at 1209 (citation and internal
25 quotation marks omitted); see also Kerr v. Screen Guild Extras,
26 Inc., 526 F.2d 67, 70 (9th Cir. 1975) (enumerating factors on
27 which courts may rely in adjusting the lodestar figure). The
28 Ninth Circuit has emphasized that a district court's application

1 of the Kerr factors should reflect the extent to which those
2 factors "bear on the reasonableness of a fee award." Morales v.
3 City of San Rafael, 96 F.3d 359, 361 (9th Cir. 1996). In
4 determining the size of an appropriate fee award, the Supreme
5 Court has emphasized that courts need not "achieve auditing
6 perfection" or "become green-eyeshade accountants." Fox v. Vice,
7 --- U.S. ---, 131 S.Ct. 2205, 2217 (2011). Rather, because the
8 "essential goal of shifting fees . . . is to do rough justice,"
9 the court may "use estimates" or "take into account [its] overall
10 sense of a suit" to determine a reasonable attorney's fee. Id.

11 A. Lodestar Calculation

12 1. Hours Reasonably Expended

13 Under the lodestar method, "a district court must start
14 by determining how many hours were reasonably expended on the
15 litigation, and then multiply those hours by the prevailing local
16 rate for an attorney of the skill required to perform the
17 litigation." Moreno v. City of Sacramento, 534 F.3d 1106, 1111
18 (9th Cir. 2008). In determining an appropriate fee award, "the
19 district court should exclude hours 'that are excessive,
20 redundant, or otherwise unnecessary.'" McCown v. City of
21 Fontana, 565 F.3d 1097, 1102 (9th Cir. 2009) (quoting Hensley v.
22 Eckerhart, 461 U.S. 424, 434 (1983)).

23 That standard is qualified by the Ninth Circuit's
24 admonition that, as a general rule, "the court should defer to
25 the winning lawyer's professional judgment as to how much time he
26 was required to spend on the case." Moreno, 534 F.3d at 1112;
27 see also E-Pass Techs., Inc. v. 3Com Corp., Civ. No. 00-2255 DLJ,
28 2007 WL 4170514, at *6 (N.D. Cal. Nov. 14, 2007) ("[T]he court

1 will not second-guess reasonable attorney conduct of a litigation
2 strategy for the case."). This principle applies with particular
3 force to a plaintiff's attorney in a civil rights case, who--as
4 is the case here--typically works on a contingency basis, and
5 therefore has little incentive to expend unnecessary hours. See,
6 e.g., Moreno, 534 F.3d at 1112 ("It would be the highly unusual
7 civil rights case where [a] plaintiff's lawyer engages in
8 churning."); Blackwell v. Foley, 724 F. Supp. 2d 1068, 1080 (N.D.
9 Cal. 2010) ("[I]f anything, an attorney working on contingency is
10 less likely to expend unnecessary hours because the payoff is too
11 uncertain.").

12 Plaintiffs have submitted a billing statement
13 reflecting 517.95 hours billed by attorney Gayla Libet, 481.85
14 hours billed by attorney John Burriss, 383.20 hours billed by
15 attorney DeWitt Lacy, and 146.50 hours billed by paralegals.
16 (Decl. of John Burriss ("Burriss Decl.") Ex. B (Docket No. 183-2).)
17 Defendants object to a majority of this time as "excessive,
18 redundant, or otherwise unnecessary."¹ (Defs.' Opp'n at 4-10
19 (Docket No. 192.) While defendants object to 234 discrete time
20 entries, these objections reiterate several common contentions,
21 and the court will discuss them separately.

22 a. Excessive Billing

23 Despite defendants' objections, there is little
24 evidence that plaintiffs' counsel spent an excessive number of
25

26 ¹ Defendants present these objections in an itemized
27 statement of objections. (See Defs.' Itemized Objections to
28 Pls.' Billing Statements ("Defs.' Objections") (Docket No. 194).)
For ease of reference, the court will refer to billing entries as
they are numbered in this statement.

1 hours working on this matter. While defendants frequently
2 compare the number of hours that their attorneys spent on a task
3 to the number of hours that plaintiffs' attorneys spent on a
4 task, these comparisons do not support the conclusion that
5 plaintiffs' counsel billed an excessive number of hours. See
6 Democratic Party of Wash. State v. Reed, 388 F.3d 1281, 1287-88
7 (9th Cir. 2004) (noting that courts should not "compare the total
8 hours" spent by each side to determine whether those hours
9 suggest "excessiveness or needless duplication"); Ferland v.
10 Conrad Credit Corp., 244 F.3d 1145, 1151 (9th Cir. 2001)
11 ("Comparison of the hours spent in particular tasks by the
12 attorney seeking fees and by the attorney for the opposing party
13 . . . does not necessarily indicate whether the hours expended by
14 the party seeking fees were excessive.").

15 Defendants also object to several billing entries on
16 the basis that plaintiffs' counsel inappropriately staffed
17 multiple lawyers on tasks that required only one lawyer and that
18 these staffing decisions resulted in unnecessary duplication of
19 effort. Although the Ninth Circuit has instructed courts to
20 "examine with skepticism claims that several lawyers were needed
21 to perform a task," it has also emphasized that staffing multiple
22 lawyers on a single task is not alone evidence of excessive
23 billing. Reed, 388 F.3d at 1286; see also Moreno, 534 F.3d at
24 1113 (emphasizing that "[f]indings of duplicative work should not
25 just become a shortcut for reducing a fee award without
26 identifying just why the requested fee was excessive").

27 Although defendants have "direct[ed] the court to
28 particular billing entries" they find excessive, they have

1 provided no specific reasons why the assignment of multiple
2 attorneys to particular tasks was objectionable. Sunstone
3 Behavioral Health, Inc. v. Alameda Cnty. Med. Ctr., 646 F. Supp.
4 2d 1206, 1214 (E.D. Cal. 2009) (Shubb, J.). Numerous courts have
5 recognized that staffing multiple attorneys on a single task may
6 improve a party's chance of success in litigation. See, e.g.,
7 PSM Holding Corp. v. Nat'l Farm Fin. Corp., 743 F. Supp. 2d 1136,
8 1157 (C.D. Cal. 2010) ("[D]ivision of responsibility may make it
9 necessary for more than one attorney to attend activities such as
10 depositions and hearings. Multiple attorneys may be essential
11 for planning strategy, eliciting testimony or evaluating facts or
12 law." (citation and internal quotation marks omitted)); cf.
13 United States v. City & County of San Francisco, 748 F. Supp.
14 1416, 1421 (N.D. Cal. 1990) (noting that "the presence of several
15 attorneys at strategy sessions for complex civil rights class
16 actions may be crucial to the case").

17 Likewise, although defendants object to several time
18 entries spent on office conferences, "[a] conference with only
19 one participant is no longer a conference," and "[t]he upshot of
20 accepting [this] view would be to hold that all conferencing by
21 [plaintiffs'] attorneys was excessive and duplicative." Prison
22 Legal News v. Schwarznegger, 561 F. Supp. 2d 1095, 1103-04 (N.D.
23 Cal. 2008), aff'd, 608 F.3d 446 (9th Cir. 2010) (citations and
24 internal quotation marks omitted). Absent any specific evidence
25 that plaintiffs' decision to staff multiple attorneys on
26 particular tasks was excessive, the court will not reduce the
27 billed hours of plaintiffs' counsel on this basis. See Moreno,
28 534 F.3d at 1114 (noting that the "district court may not set the

1 fee based on speculation as to how other firms would have staffed
2 the case").

3 Defendants also object to several billing entries on
4 the basis that the attorney had billed for a task that he or she
5 had previously billed for. In particular, defendants contend
6 that the hours Libet spent reviewing and summarizing the criminal
7 trial transcript and defendants' internal affairs files in 2013
8 were excessive because she had billed for similar work in 2007.
9 (See generally Defs.' Objections 103-116; Defs.' Opp'n at 4.)

10 The Ninth Circuit has recognized that "[w]hen a case goes on for
11 many years," some degree of duplication is justifiable because a
12 "lawyer needs to get up to speed with the research previously
13 performed." Moreno, 534 F.3d at 1112. Here, Libet's need to
14 review these files a second time does not reflect any failing on
15 her part, but resulted instead from a four-year period in which
16 the case was stayed due to the City of Vallejo's bankruptcy
17 proceedings. (See Docket No. 70.) These hours therefore do not
18 reflect unnecessary duplication of effort, and the court will not
19 reduce them.

20 Although the court finds that a majority of the billing
21 entries submitted by plaintiffs' counsel are not excessive or
22 unnecessary, it concludes that one entry submitted by Libet on
23 June 6, 2007, is excessive. (See Defs.' Objections 39.) That
24 entry reflects that Libet spent sixteen hours drafting,
25 reviewing, revising, and faxing a summary of the criminal trial
26 transcript, as well as making several phone calls. Plaintiffs
27 have not explained why Libet spent sixteen hours on these tasks,
28 particularly given the additional time she billed for summarizing

1 the criminal trial transcript the days immediately before and
2 after. (See id. 38, 40.) The court will therefore reduce this
3 entry by fifty percent or a total of eight hours.

4 b. Block Billing

5 "Block billing is the time-keeping method by which each
6 lawyer and legal assistant enters the total daily time spent
7 working on a case, rather than itemizing the time expended on
8 specific tasks." Welch v. Metro. Life Ins. Co., 480 F.3d 942,
9 945 n.2 (9th Cir. 2007) (citation and internal quotation marks
10 omitted). "[B]lock billing makes it more difficult to determine
11 how much time was spent on particular activities." Id. at 948;
12 see also Bell v. Vista Unified Sch. Dist., 82 Cal. App. 4th 672,
13 689 (4th Dist. 2000) (noting that block billing "render[s] it
14 virtually impossible to break down hours on a task-by-task
15 basis"). Additionally, "block billing hides accountability and
16 may increase time by 10% to 30% by lumping together tasks."
17 Yeager v. Bowlin, Civ. No. 2:08-102 WBS JFM, 2010 WL 1689225, at
18 *1 (E.D. Cal. Apr. 26, 2010), aff'd, 495 Fed. App'x 780 (9th Cir.
19 2012) (citing The State Bar of California Committee on Mandatory
20 Fee Arbitration, Arbitration Advisory 03-01 (2003)) (internal
21 quotation marks omitted). This court has therefore concluded
22 that "the usage of block billing is fundamentally inconsistent
23 with the lodestar method." Id.

24 Although the Ninth Circuit has held that district
25 courts may not account for block billing by applying an across-
26 the-board reduction to the hours claimed in a fee petition,
27 courts may apply a percentage reduction to those hours that are
28 actually block-billed. Welch, 480 F.3d at 948; Mendez v. County

1 of San Bernadino, 540 F.3d 1109, 1129 (9th Cir. 2008) (noting
2 that block billing provides "legitimate grounds for reducing or
3 eliminating certain claimed hours"); Nat'l Res. Def. Council v.
4 Locke, 771 F. Supp. 2d 1203, 1214 (N.D. Cal. 2011) (noting that
5 any reduction in hours "must be tailored to those hours that were
6 actually billed in block format") (internal quotation marks and
7 citation omitted). Courts in the Ninth Circuit have reduced up
8 to thirty percent of the hours that are block-billed. See, e.g.,
9 Lahiri v. Universal Music & Video Distrib. Corp., 606 F.3d 1216,
10 1222-23 (9th Cir. 2010) (thirty percent); Jones v. Metro. Life
11 Ins. Co., 845 F. Supp. 2d 1016, 1031 (N.D. Cal. 2012) (twenty
12 percent). The court also retains discretion not to reduce hours
13 that are purportedly block billed if those time entries "are
14 detailed enough for the [c]ourt to assess the reasonableness of
15 the hours billed." Campbell v. Nat'l Passenger R.R. Corp., 718
16 F. Supp. 2d 1093, 1103 (N.D. Cal. 2010).

17 Burris, Libet, and Lacy all engaged in significant
18 amounts of block billing. This block billing takes two different
19 forms. First, there are some time entries in which a block of
20 time is billed for a single broad task. For instance, on August
21 1, 2013, Burris billed 12.1 hours for "Trial Preparation:
22 Meetings with Witnesses." (See Defs.' Objections 203.) On July
23 22, 2013, Burris billed 10.2 hours for "Trial Preparation:
24 Prepare Jury Instructions and Voir Dire." (See id. at 167.)
25 These billing entries do not contain sufficient information to
26 permit the court to "assess the reasonableness of the hours
27 billed," and are therefore improper. Campbell, 714 F. Supp. 2d
28 at 1103.

1 Second, there are other time entries in which a block
2 of time is billed for several discrete tasks. For instance, on
3 June 24, 2007, Libet billed 6.75 hours for seven discrete tasks,
4 each of which were separated by semicolons, without describing
5 how much time she spent on each task. (See id. at 46.) Although
6 plaintiffs contend that her itemized billing entries do not
7 constitute block-billing as that term is defined by Welch and its
8 progeny, these entries still constitute improper block billing
9 because they do not contain an "itemization of the amount of time
10 spent by the fee applicant on each discrete task." Yeager, 2010
11 WL 1689225, at *1 (emphasis added).

12 Having reviewed plaintiffs' billing statements, the
13 court finds that 197.7 of Burris's 481.85 hours,² 187.7 of Lacy's
14 383.2 hours,³ and 175.15 of Libet's 517.95 hours⁴ were improperly

15 _____
16 ² That time consists of the following time entries, as
17 noted in defendants' itemized statement of objections: 143
18 (12.00); 146 (10.10); 158 (10.50); 162 (12.30); 167 (10.20); 169
19 (13.40); 177 (11.00); 179 (12.00); 183 (14.00); 187 (11.80); 193
20 (12.60); 197 (11.70); 203 (12.10); 207 (12.60); 210 (11.60); 215
21 (11.80); and 231 (8.00).

22 ³ That time consists of the following time entries, as
23 noted in defendants' itemized statement of objections: 159
24 (10.50); 166 (7.40); 171 (9.70); 175 (6.20); 181 (12.00); 186
25 (14.00); 191 (11.80); 194 (10.00); 196 (11.70); 200 (3.70); 202
26 (12.10); 204 (3.20); 208 (12.60); 212 (11.60); 219 (11.80); 223
27 (10.70); 227 (8.20); 229 (6.00); 230 (6.50); and 232 (8.00).

28 ⁴ That time consists of the following time entries, as
noted in defendants' itemized statement of objections: 3 (2.00);
4 (2.50); 6 (3.00); 8 (3.00); 9 (3.00); 10 (2.00); 11 (6.00); 12
(3.00); 13 (3.00); 14 (6.00); 15(3.00); 19 (6.50); 20 (8.00); 21
(4.00); 25 (5.00); 26 (3.00); 27 (8.00); 28 (7.00); 29 (8.00); 30
(2.00); 33 (4.00); 34 (3.50); 35 (2.00); 38 (7.50); 40 (4.50); 43
(2.00); 46 (6.75); 47 (9.25); 48 (4.00); 49 (8.00); 72 (2.65); 78
(8.00); 124 (4.00); 128 (10.00); 168 (5.00); and 170 (6.00).

As explained later in this Order, the court reduces
several of Libet's other time entries because they are entirely
duplicative of one another, or because they consist entirely of

1 block-billed. The court will apply a twenty percent reduction to
2 these hours, resulting in a total reduction of 35.03 hours of
3 Libet's time, 39.54 hours of Burris's time, and 37.54 hours of
4 Lacy's time.⁵ A number of other entries that defendants
5 characterize as improper block billing contain sufficient detail
6 for the court to assess their reasonableness, and therefore merit
7 no reduction. See Campbell, 714 F. Supp. 2d at 1103.

8 c. Duplicative Time Entries

9 Defendants also object to several of Libet's time
10 entries on the basis that they are duplicative of one another.
11 As explained above, it is not appropriate for the court to reduce
12 Libet's hours on the basis that she duplicated the work of other
13 attorneys, or that she performed work in 2013 that she had also

14 clerical or secretarial work. Although those entries are also
15 block-billed, the court declines to apply a twenty percent
16 reduction to those entries because the reductions it imposes
17 instead are sufficient to account for the inefficiencies or time
18 spent on non-billable tasks that block billing obscures. The
19 Ninth Circuit has explicitly admonished courts that imposing this
20 sort of double penalty on billed hours is improper. See Moreno,
534 F.3d 1106 (holding that "double counting the reduction in
hourly rate for some tasks . . . is impermissible" (citing
Cunningham v. County of Los Angeles, 879 F.2d 481, 489 (9th Cir.
1988))).

21 ⁵ At oral argument, the court raised the possibility that
22 it might provide plaintiffs an opportunity to submit a revised
23 billing statement itemizing the time that plaintiffs' attorneys
24 spent on each discrete task. However, based on its review of
25 plaintiffs' billing statements, the court lacks confidence that
26 plaintiffs could identify how much time was spent on discrete
27 tasks based on records that are several months--if not years--
28 old. Moreover, plaintiffs' attorneys are experienced civil
rights litigators and should have understood that their billing
statements would be subject to close scrutiny in attorneys' fees
proceedings. In light of these considerations, the court will
apply a percentage reduction to plaintiffs' billing statements in
lieu of permitting plaintiffs' attorneys to submit a revised
statement.

1 performed in 2007. See Moreno, 534 F.3d at 1112. The court
2 nonetheless finds that several of Libet's time entries are
3 virtual carbon copies of one another and are thus improperly
4 duplicative. See id. at 1113 (noting that courts may reduce
5 hours based on "a specific reason for believing that work is
6 excessive or duplicative"); cf. Locke, 771 F. Supp. 2d at 1212
7 (noting that "fees are not recoverable for . . . time entries
8 that appear to have been accidentally duplicated").

9 On August 21 and 22, 2007, Libet billed eight hours for
10 six discrete tasks. (See Defs.' Objections 66-67.) Those
11 billing entries are identical to one another. On May 9, 10, and
12 11, 2013 Libet billed 6.2 hours for seven discrete tasks spread
13 across two billing entries each day. (See id. at 103-108.) Each
14 day's billing entries are identical to one another. Finally, on
15 May 12 and 13, 2013, Libet billed a total of seven hours a day
16 for a total of six discrete tasks, which were spread out over two
17 identical billing entries on each day. (See id. at 109-112.)
18 The court will count only one of each of these sets of duplicate
19 entries, amounting to a total reduction of 27.2 hours in time.

20 On May 14, 15, and 16, 2013, Libet recorded three
21 identical billing entries for 3.8 hours each day consisting of
22 two or three discrete tasks. (See id. at 115, 116, 120.) On May
23 14, 15, 16, and 17, 2013, Libet recorded four separate identical
24 billing entries for 11.00 hours each day consisting of four or
25 five discrete tasks. (See id. at 113, 117, 119, 121.) The court
26 is especially skeptical of these entries because they indicate
27 that Libet worked for exactly 14.8 hours per day for three
28 consecutive days on exactly the same tasks. See In re Gill, B.R.

1 No. 1:12-18909 WRL, 2013 WL 4853307, at *4 (E.D. Cal. Sep. 10,
2 2013) (disallowing a lawyer and her paralegal from recovering
3 fees when they submitted thirty-four identical billing entries);
4 cf. Cotton v. City of Eureka, 889 F. Supp. 2d 1154, 1178 (N.D.
5 Cal. 2012) (finding that an attorney's billing records showing
6 that he worked between sixteen and twenty hours on five
7 consecutive days, as well as exactly eighteen hours on two days
8 the next week, were not credible and reducing his fee award).
9 Because these entries are entirely duplicative, the court will
10 permit Libet to bill for only one 3.8-hour entry and one eleven-
11 hour entry during the period between May 14 and May 17, 2013.
12 This amounts to a reduction of 40.6 hours of time.

13 On June 30 and July 1, 2, and 3, 2007, Libet recorded
14 four identical billing entries of eight hours apiece to review
15 and revise a series of discovery requests. (See Defs.'
16 Objections 49, 50, 52, 54.) Although these entries are identical
17 to one another, it is inappropriate to reduce her bill to only
18 one such entry because it is highly unlikely that she only worked
19 eight hours on this task out of the thirty-two she billed for it.
20 The court will therefore reduce these entries by fifty percent,
21 or a total of sixteen hours. These reductions sum to a total of
22 83.8 hours of time reduced because of duplicative time entries.⁶

23 d. Non-Billable Activities

24 _____
25 ⁶ Defendants also object to a set of six identical time
26 entries, three by Libet and three by Lacy, on April 26, 29, and
27 30, 2013 for "Telephone Calls and E-Mails" regarding the date of
28 the mediation conference. (See Defs.' Objections 86-90.) The
court determines that these time entries, which amount to one
hour apiece, are reasonable and therefore imposes no reduction on
these hours.

1 The Supreme Court has cautioned that “[h]ours that are
2 not properly billed to one’s client are also not properly billed
3 to one’s adversary.” Hensley, 461 U.S. at 434. Seizing upon
4 this maxim, defendants object to several billing entries on the
5 basis that they reflect activities which lawyers may not bill
6 for.

7 Defendants object to several of Libet’s billing entries
8 on the basis that they reflect non-billable clerical or
9 secretarial work. (See generally Defs.’ Opp’n at 4.) The Ninth
10 Circuit has recognized that work that is “clerical in nature . .
11 . should [be] subsumed in firm overhead rather than billed” and
12 is therefore not recoverable. Nadarajah v. Holder, 569 F.3d 906,
13 921 (9th Cir. 2009); see also Missouri v. Jenkins, 491 U.S. 274,
14 288 n.10 (1989) (noting that time expended on “purely clerical or
15 secretarial tasks” may not be recovered under § 1988). In
16 particular, time spent on tasks like “calendarizing deadlines,
17 confirming papers were filed, organizing files, and
18 electronically filing documents” is not properly billable. In re
19 Mohsen, 473 B.R. 779, 795 (N.D. Cal. 2012). Upon review of
20 Libet’s billing entries, it appears that eighteen hours⁷ that
21 Libet billed were comprised of purely clerical or secretarial
22 tasks, and the court will reduce her time by eighteen hours.

23 Defendants also object to several of Libet’s time
24 entries related to plaintiffs’ filing of amended exhibit and
25 witness lists. (See generally Defs.’ Opp’n at 6.) Defendants
26

27 ⁷ That time consists of the following time entries, as
28 noted in defendants’ itemized statement of objections: 16 (1.00);
60 (5.50); 61 (2.50); 81 (6.00); and 139 (3.00).

1 contend that the need to file these amended lists arose only
2 because plaintiffs' initial filings contained confidential
3 information, and thus the time Libet spent as a consequence of
4 those mistaken filings is not compensable. (See id.) The court
5 agrees that Libet may not recover attorney's fees for time that
6 was "necessitated by [her] own negligence." In re Deuel, 482
7 B.R. 323, 333 (S.D. Cal. 2012); see also, e.g., Cortes v. Metro.
8 Life Ins. Co., 380 F. Supp. 2d 1125, 1133 (C.D. Cal. 2005)
9 (holding that the plaintiff's attorney could not bill hours spent
10 preparing an ex parte application for contempt based on
11 defendant's failure to pay benefit checks pursuant to a court
12 order when defendant sent those checks upon request). The court
13 therefore reduces Libet's time by ten hours, equivalent to the
14 amount of time she billed on these tasks.⁸

15 e. Paralegal Time

16 Defendants object to several billing entries for
17 paralegal time on the basis that this time consists of non-
18 billable secretarial or clerical tasks. (Defs.' Opp'n at 9.) As
19 a general rule, "purely clerical or secretarial tasks should not
20 be billed at a paralegal rate, regardless of who performs them."
21 Jenkins, 491 U.S. at 288 n.10. Those tasks include, but are not
22 limited to: creating indexes for a binder; filing emails,
23 memoranda, and other correspondence; updating the case calendar
24 with new dates; copying, scanning, and faxing documents; and
25 filing or serving documents. Prison Legal News, 561 F. Supp. 2d
26

27 ⁸ That time consists of the following time entries, as
28 noted in defendants' itemized statement of objections: 141
(3.00); 144 (2.00); 149 (1.00); and 151 (4.00).

1 at 1102. In order to recover for this time, "plaintiff[s] must
2 show that such expenses are not subsumed in the attorney[s']
3 hourly rate and that billing secretarial expenses separately is
4 the prevailing practice in this forum." Joe Hand Promotions,
5 Inc. v. Albright, Civ. No. 2:11-2260 WBS CMK, 2013 WL 4094403, at
6 *3 (E.D. Cal. Aug. 12, 2013) (citing Trs. of Const. Indus. &
7 Laborers Health & Welfare Trust v. Redland Ins. Co., 460 F.3d
8 1253, 1257 (9th Cir. 2006)).

9 Having reviewed plaintiffs' billing statements, the
10 court determines that 9.45 hours are comprised of purely clerical
11 or secretarial tasks.⁹ Plaintiffs have not provided any evidence
12 that billing separately for these tasks is the prevailing
13 practice in this district. See Albright, 2013 WL 4094403, at *3.
14 Those hours are therefore reduced from the total number of hours
15 billed by plaintiffs for paralegal services. The court also
16 finds that eleven hours¹⁰ of paralegal time were improperly block
17 billed and reduces that time by twenty percent, or 2.2 hours.
18 Defendants provide no specific reason that any other paralegal
19 time is "excessive, redundant, or otherwise unnecessary," McCown,
20 565 F.3d at 1102, and the court will not reduce those hours on

21 ⁹ That time consists of the following time entries, as
22 noted in defendants' itemized statement of objections: 1 (0.30);
23 2 (0.50); 5 (0.50); 7 (0.30); 17 (0.30); 22 (0.10); 24 (0.10); 31
24 (0.01); 32 (0.10); 36 (0.25); 37 (0.10); 44 (0.10); 51 (0.25); 62
25 (0.10); 68 (0.25); 69 (0.25); 70 (0.10); 71 (0.10); 73 (0.25); 74
26 (0.10); 75 (0.10); 76 (0.25); 77 (0.30); 79 (0.30); 80 (0.30); 82
27 (0.10); 83 (0.10); 91 (0.25); 92 (0.10); 98 (0.10); 99 (0.20);
101 (0.20); 114 (0.10); 118 (0.10); 122 (0.10); 125 (0.30); 132
28 (0.25); 134 (0.25); 138 (0.30); 142 (0.10); 180 (0.75); 192
(0.50); 201 (0.20); 218 (0.20); and 234 (0.75).

¹⁰ That time consists of the following time entries, as
noted in defendants' itemized statement of objections: 172
(5.00); 174 (3.00); and 178 (3.00).

1 this basis. Between these adjustments, the court reduces
2 plaintiffs' paralegal time by a total of 11.65 hours.

3 Having accounted for any time that is "excessive,
4 redundant, or otherwise unnecessary," id., the court finds that
5 Burris reasonably expended 442.31 hours, Libet reasonably
6 expended 363.84 hours, Lacy reasonably expended 345.66 hours, and
7 the paralegals reasonably expended 134.85 hours.

8 2. Reasonable Hourly Rate

9 "In addition to computing a reasonable number of hours,
10 the district court must determine a reasonable hourly rate to use
11 for attorneys and paralegals in computing the lodestar amount."
12 Gonzalez, 729 F.3d at 1205 (citation omitted). A reasonable
13 hourly rate is not defined "by reference to the rates actually
14 charged by the prevailing party." Chalmers v. City of Los
15 Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986). Rather, "[t]he
16 Supreme Court has consistently held that reasonable fees 'are to
17 be calculated according to the prevailing market rates in the
18 relevant community.'" Van Skike v. Dir., Off. of Workers' Comp.
19 Programs, 557 F.3d 1041, 1046 (9th Cir. 2009) (quoting Blum v.
20 Stetson, 465 U.S. 886, 895 (1984)).

21 "Generally, when determining a reasonable hourly rate,
22 the relevant community is the forum in which the district court
23 sits." Prison Legal News, 608 F.3d at 454 (internal quotation
24 marks omitted). It is appropriate to rely on rates outside the
25 local forum only where "local counsel was unavailable, either
26 because they are unwilling or unable to perform because they lack
27 the degree of experience, expertise, or specialization required
28 to handle properly the case." Barjon v. Dalton, 132 F.3d 496,

1 500 (9th Cir. 1997) (quoting Gates v. Deukmejian, 987 F.2d 1392,
2 1405 (9th Cir. 1992) (internal quotation marks omitted)).

3 Plaintiffs have provided no evidence demonstrating that
4 local counsel was unavailable or unable to handle a case of this
5 nature. Judges in this district have consistently applied "the
6 prevailing market rate for a civil rights attorney practicing in
7 the Sacramento area," even in cases considerably more complex
8 than this one. Knox v. Chiang, Civ. No. 2:05-2198 MCE CKD, 2013
9 WL 2434606, at *7 (E.D. Cal. Jun. 5, 2013) (applying Sacramento
10 rates in a case regarding union dues for public sector employees
11 which proceeded to the Ninth Circuit and the Supreme Court on
12 appeal); see also, e.g., Lehr v. City of Sacramento, Civ. No.
13 2:07-1565 MCE GGH, 2013 WL 1326546, at *4 (E.D. Cal. Apr. 2,
14 2013) (applying Sacramento rates in a complex class action
15 asserting unconstitutional treatment of homeless individuals in
16 Sacramento).

17 Plaintiffs rely on Valdivia v. Brown, 848 F. Supp. 2d
18 1141, 1143 (E.D. Cal. 2011) (Karlton, J.), in support of the
19 proposition that San Francisco, rather than Sacramento, is the
20 relevant community in this matter. (Pls.' Reply at 5 (Docket No.
21 196).) There, the court found that San Francisco rates were
22 appropriate in a complex class action involving the
23 constitutional rights of parolees because the plaintiffs had
24 "tendered evidence" that "there were no Sacramento firms
25 experienced and capable enough, and willing to undertake the
26 case." Id. Because plaintiff has not provided evidence of this
27 sort or identified any other reasons that San Francisco rates are
28 appropriate, the court will apply Sacramento billing rates in

1 this matter.¹¹ See Barjon, 132 F.3d at 500.

2 The hourly rates that plaintiffs request--\$800 for
3 Burris, \$400 for Libet, \$265 for Lacy, and \$150 to \$180 for
4 paralegals--significantly exceed prevailing market rates in the
5 Sacramento area. Although Burris has nearly thirty-five years of
6 legal experience and has a record of high-profile representations
7 in civil rights matters, (see Burris Decl. ¶¶ 1-15), judges in
8 this district have typically awarded rates between \$350 and \$450
9 to attorneys of comparable skill and experience. See, e.g.,
10 Lehr, 2013 WL 1326546, at *7 (awarding \$400 per hour to a "highly
11 qualified civil rights attorney with over 40 years of relevant
12 litigation experience"); Knox, 2013 WL 2434606, at *7 (finding
13 that "the prevailing hourly rate for experienced civil rights
14 attorneys practicing in the Sacramento area does not exceed
15 \$400," and awarding \$450 an hour in light of attorney's
16 experience and their success before the Supreme Court); Jones v.
17 County of Sacramento, Civ. No. 2:09-1025 DAD, 2011 WL 3584332, at
18 *8 (E.D. Cal. Aug. 12, 2011) (finding that an hourly rate of \$350
19 for a civil rights attorney with thirty-five years of litigation
20 experience was "in line with those prevailing in the Sacramento
21 market"). An hourly rate of \$400, the rate suggested by

22
23 ¹¹ Plaintiffs also assert that Burris "would no longer be
24 able to practice in this court" if he is not compensated at his
25 normal rate of \$800 an hour, and that his potential departure
26 from the Eastern District of California "is a real threat to
27 justice in this jurisdiction." (Pls.' Reply at 5-6.) While the
28 court is mindful of the need to set fees at a level that will
attract skilled attorneys to take on civil rights cases, there
are many qualified attorneys in this district who do not believe
they are entitled to \$800 an hour--twice the prevailing market
rate for attorneys of Burris's caliber--for their work.

1 defendants, is therefore appropriate for Burris.

2 Libet has practiced since 1983, and has practiced
3 primarily in civil rights litigation since 1989. (See Amended
4 Decl. of Gayla B. Libet Ex. 1 (Docket No. 190-1).) Judges in
5 this district have found that a rate between \$250 and \$280 is
6 appropriate for civil rights attorneys with comparable
7 experience. See, e.g., Lehr, 2013 WL 1326546, at *7-8 (awarding
8 an attorney admitted in 1975 who assisted experienced civil
9 rights attorneys \$260 per hour); Jones, 2011 WL 3584332, at *9-10
10 (finding that an hourly rate of \$250 was appropriate for an
11 attorney with ten years of civil litigation experience); Cal.
12 Pro-Life Council, Inc. v. Randolph, Civ. No. 2:00-1698 FCD GGH,
13 2008 WL 4453627, at *4 (E.D. Cal. Sep. 30, 2008) (noting that
14 prevailing rates in Sacramento for partners with over ten years
15 of experience range between \$260 and \$280). In light of her
16 experience, the court determines that an hourly rate of \$280 is
17 appropriate for Libet.

18 Lacy has practiced since 2007, and has practiced
19 primarily in civil rights litigation since 2011. (See Burris
20 Decl. Ex. 3 (Docket No. 183-3).) The market rate for associates
21 with comparable experience ranges "between \$150 and \$175 per
22 hour." Albright, 2013 WL 4094403, at *3 (citations omitted); see
23 also, e.g., Yeager, 2010 WL 2303273, at *6 (finding that \$150 is
24 a reasonable hourly rate for associates in the Eastern District);
25 Broad. Music Inc. v. Antigua Cantina & Grill, LLC, Civ. No. 2:12-
26 1196 KJM DAD, 2013 WL 224461, at *1 (E.D. Cal. May 21, 2013)
27 (awarding an hourly rate of \$175). The court therefore
28 determines that an hourly rate of \$175 is appropriate for Lacy.

1 Finally, courts in this district have generally found
2 that \$75 is an appropriate hourly rate for paralegals. See,
3 e.g., Albright, 2013 WL 4094403, at *3 (citations omitted)
4 (awarding an hourly rate of \$75 for paralegals); Friedman v. Cal.
5 State Emps. Ass'n, 2:00-101 WBS DAD, 2010 WL 2880148, at *4 (E.D.
6 Cal. July 21, 2010) (noting that "the paralegal rate favored in
7 this district is \$75 per hour" (citations and internal quotation
8 marks omitted)). The court will therefore apply an hourly rate
9 of \$75 for the time expended by plaintiffs' paralegals.

10 In sum, the court finds that Burris reasonably billed
11 442.31 hours at an hourly rate of \$400, that Libet reasonably
12 billed 363.84 hours at an hourly rate of \$280, that Lacy
13 reasonably billed 345.66 hours at an hourly rate of \$175, and
14 that the paralegals reasonably billed 134.85 hours at an hourly
15 rate of \$75. This results in a lodestar of \$349,403.25,
16 calculated as follows:

Burris:	442.31	x	\$400	=	\$176,924.00
Libet:	363.84	x	\$280	=	\$101,875.20
Lacy:	345.66	x	\$175	=	\$60,490.50
Paralegals:	134.85	x	\$75	=	<u>\$10,113.75</u>
					\$349,403.25

22 B. Adjustment to the Lodestar

23 Once the court has computed the lodestar, there is a
24 "'strong presumption' that the lodestar is the reasonable fee."
25 Crawford v. Astrue, 586 F.3d 1142, 1149 (9th Cir. 2009) (quoting
26 City of Burlington v. Dague, 505 U.S. 557, 562 (1992)). However,
27 the Ninth Circuit has emphasized that the district court must
28 consider "whether it is necessary to adjust the presumptively

1 reasonable lodestar figure on the basis of the Kerr factors that
2 are not already subsumed in the initial lodestar calculation."
3 Morales, 96 F.3d at 363-64 (citations omitted). Those factors
4 include:

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

18 Kerr, 526 F.2d at 670. "The court should consider the factors
19 established by Kerr, but need not discuss each factor." Eiden v.
20 Thrifty Payless Inc., 407 F. Supp. 2d 1165, 1168 n.4 (E.D. Cal.
21 2005) (Shubb, J.) (citing Sapper v. Lenco Blade, Inc., 704 F.2d
22 1069, 1073 (9th Cir. 1983)).

23 Here, defendants argue that the lodestar award should
24 be reduced to account for plaintiffs' limited success at trial.¹²
25 Both the Supreme Court and the Ninth Circuit have emphasized that
26 "the extent of a plaintiff's success is a crucial factor for
27 determining the proper amount of an award of attorney's fees
28 under 42 U.S.C. § 1988." Hensley, 461 U.S. at 440; see also

24 ¹² The extent of the plaintiff's success or the "results
25 obtained" is frequently subsumed within the calculation of the
26 lodestar itself. See Cabrales v. County of Los Angeles, 864 F.2d
27 1454, 1464 (9th Cir. 1988); Morales, 96 F.3d at 364 n.9. Because
28 the court has not considered the "results obtained" as part of
its initial calculation of the lodestar, the court may adjust the
lodestar separately to account for plaintiffs' limited success so
long as it "only makes one adjustment per factor." Id.

1 McCown, 565 F.3d at 1103 (holding that attorney's fees "must be
2 adjusted downward where the plaintiff has obtained limited
3 success on his pleaded claims, and the result does not confer a
4 meaningful public benefit").

5 The Supreme Court has identified "two questions [that]
6 must be addressed" in conducting this inquiry. Hensley, 461 F.3d
7 at 434. First, the court must determine whether "the plaintiff
8 fail[ed] to prevail on claims that were unrelated to the claims
9 on which he succeeded[.]" Id. "[C]laims are unrelated if the
10 successful and unsuccessful claims are distinctly different both
11 legally and factually; claims are related, however, if they
12 involve a common core of facts or are based on related legal
13 theories." Dang v. Cross, 422 F.3d 800, 813 (9th Cir. 2005)
14 (citations and internal quotation marks omitted) (alterations in
15 original). If the successful claims are unrelated to the
16 unsuccessful claims, "the hours expended on the unsuccessful
17 claims should not be included in the fee award." Id.

18 Here, all of plaintiffs' claims arise out of a single
19 incident in which Patzer, Jensen, and Potts used force in the
20 process of placing plaintiffs under arrest. Because plaintiffs'
21 claims arise out of a "common core of facts," Dang, 422 F.3d at
22 813, the court may "not attempt to divide the request for
23 attorney's fees on a claim-by-claim basis." McCown, 565 F.3d at
24 1103. "Instead, the court must proceed to the second part of the
25 analysis and focus on the significance of the overall relief
26 obtained by [plaintiffs] in relation to the hours reasonably
27 expended on the litigation." Id. (citation and internal
28 quotation marks omitted).

1 In conducting the second portion of the Hensley
2 inquiry, the court should "give primary consideration to the
3 amount of damages awarded as compared to the amount sought."
4 Farrar v. Hobby, 506 U.S. 103, 114 (1992). However, "the Supreme
5 Court has disavowed a test of strict proportionality." McCown,
6 565 F.3d at 1104 (citing City of Riverside v. Rivera, 477 U.S.
7 561, 576 (1986) (Powell, J., concurring in the judgment)); see
8 also Hensley, 461 U.S. at 435 n. 11 (rejecting "a mathematical
9 approach comparing the total number of issues in the case with
10 those actually prevailed upon"). Rather, the court must also
11 consider the "excellence of the overall result," including the
12 extent to which a plaintiff's success "served the public interest
13 by vindicating important constitutional rights" or provided the
14 "public benefit of deterring unconstitutional conduct by law
15 enforcement officials" in determining its fee award. McCown, 565
16 F.3d at 1104-05.

17 On the one hand, plaintiffs did not obtain the full
18 extent of the relief that they sought. The jury did not find
19 that any defendant was liable under any of plaintiff's state-law
20 claims. The jury also did not find Patzer liable on any claim.
21 The jury found only that Potts and Jensen used excessive force
22 against Deocampo, and awarded Deocampo only \$50,000 in damages--
23 far less than the \$300,000 in general damages, in addition to
24 special and punitive damages, sought by plaintiffs in their
25 Complaint. (See Docket No. 1.) Courts in this district have
26 imposed reductions of fifty percent or more in light of similarly
27 partial success. See, e.g., Jones v. McGill, Civ. No. 1:08-396
28 LJO DLB, 2009 WL 1862457, at *5 (E.D. Cal. June 29, 2009)

1 (reducing attorney's fees over seventy-five percent when the
2 plaintiff obtained a recovery of only \$9,900 against one
3 defendant on his excessive force claims); Beecham, 2009 WL
4 3824793, at *5 (applying a downward adjustment of fifty percent
5 to the Lodestar when plaintiffs obtained only \$33,400 in damages
6 out of the \$1.8 million they sought).

7 On the other hand, plaintiffs successfully persuaded
8 the jury that two police officers had used excessive force
9 against Deocampo and that their conduct was malicious,
10 oppressive, or in reckless disregard of Deocampo's rights, which
11 is an impressive accomplishment in its own right.¹³ See Jones,
12 2011 WL 3584332, at *18 ("Achieving such a verdict is no easy
13 task and obtaining the latter finding by the jury is even more
14 difficult."). Plaintiffs' victory, while limited, also achieved
15 a significant nonmonetary result "because successful suits act as
16 a deterrent to law enforcement and serve the public purpose of
17 helping to protect the plaintiff and persons like him from being
18 subjected to similar unlawful treatment in the future." Mendez
19 v. County of San Bernardino, 540 F.3d 1109, 1128 (9th Cir. 2008)
20 (citation and internal quotation marks omitted); see also McCown,
21 565 F.3d at 1105 (noting that courts may "consider the public
22 benefit of deterring unconstitutional conduct by law enforcement
23 officials in determining the appropriate fee" (citing Morales, 96
24 F.3d at 364)). Several judges of this district have found that

25 ¹³ As the court indicated at oral argument, Deocampo was
26 at least as interested in being vindicated with a favorable
27 verdict as he was with a monetary recovery. This would explain,
28 for instance, why Deocampo declined to settle the case before
trial even when defendants presented him with a reasonable
settlement offer.

1 these concerns militate in favor of a small reduction or no
2 reduction in the lodestar. See, e.g., Jones, 2011 WL 3584332, at
3 *19 (applying a twenty-five percent reduction); Lehr, 2013 WL
4 1236545, at *15 (applying no reduction to the lodestar).

5 Having considered these factors, the court concludes
6 that a twenty-five percent reduction in the lodestar is
7 appropriate. Accordingly, the court will reduce the lodestar
8 amount by twenty-five percent to \$262,052.44.

9 C. Fees on Fees

10 In addition to fees awarded for success in the
11 litigation, a prevailing party under Section 1988 is also
12 entitled to recover fees for work performed in preparing the
13 motion for attorney's fees itself. Camacho v. Bridgeport Fin.,
14 Inc., 523 F.3d 973, 980 (9th Cir. 2008) ("In statutory fee cases,
15 federal courts, including our own, have uniformly held that time
16 spent in establishing the entitlement to and amount of the fee is
17 compensable." (citing In re Nucorp Energy, Inc., 764 F.2d 655,
18 659-60 (9th Cir. 1985)). "Attorney's fees requests for work
19 litigating attorney's fees are treated the same as for work done
20 on the merits of a case." Winterstein v. Stryker Corp. Grp. Life
21 Ins. Plan, 262 Fed. App'x 841, 843 (9th Cir. 2008) (citing
22 Thompson v. Gomez, 45 F.3d 1365, 1367-68 (9th Cir. 1995)); see
23 also Camacho, 523 F.3d at 982-83 (emphasizing that district
24 courts must apply the lodestar approach when awarding fees on
25 fees).

26 Plaintiffs' attorney Pamela Y. Price has submitted a
27 billing statement showing that she spent 35.75 hours working on
28 this motion for attorneys' fees. (Docket No. 189-1.) The court

1 finds that two entries totaling 18.7 hours of time are
2 inappropriately block billed and imposes a twenty percent
3 reduction on those hours, totaling 3.74 hours.¹⁴ After adjusting
4 Price's billing statement to account for any hours that are
5 "excessive, redundant, or otherwise unnecessary," McCown, 565
6 F.3d at 1102, the court determines that Price reasonably expended
7 32.01 hours working on this motion.

8 Defendants argue that Price's hourly rate should be
9 reduced from \$700 to an hourly rate between \$175 and \$250 because
10 she performed no substantive work in litigating the case beyond
11 her involvement in the fees motion. (See Defs.' Supplemental
12 Opp'n at 2 (Docket No. 195).) Defendants have not cited, and the
13 court cannot identify, any authority for the proposition that an
14 attorney is entitled to a lower hourly rate for work performed on
15 a motion for attorney's fees than for work performed on other
16 tasks in the litigation. Several judges in this district have
17 awarded fees on fees at the same hourly rate as fees for work on
18 the merits. See, e.g., Wal-Mart Stores, Inc. v. City of Turlock,
19 483 F. Supp. 2d 1023, 1042 (E.D. Cal. 2007) (Wanger, J.);
20 Cummings v. Connell, 177 F. Supp. 2d 1079, 1090 (E.D. Cal. 2001)
21 (Shubb, J.), rev'd in part on other grounds, 316 F.3d 886 (9th
22 Cir. 2003). To the extent that work on the fees motion is less
23 novel or complex than work on the merits, that distinction is
24 subsumed within the calculation of the lodestar itself. See
25 Morales, 96 F.3d at 364 n.9.

26 Although it is not appropriate to reduce Price's hourly

27 ¹⁴ This time includes two billing entries on November 6,
28 2013, for 6.2 and 12.5 hours. (Docket No. 189-1.)

1 rate simply because she worked exclusively on the fees motion, an
2 hourly rate of \$700 is excessive. Because Price has practiced
3 for over three decades and has extensive experience with civil
4 rights actions, including successful appeals before the Ninth
5 Circuit and the Supreme Court, (see Decl. of Pamela Y. Price Ex.
6 A (Docket No. 186-1)), the court determines that an hourly rate
7 of \$400, the same rate as Burris, is reasonable. Multiplied by
8 32.01 hours, this amounts to a total of \$12804.

9 Price's billing statement also shows that she incurred
10 \$1716.40 in expenses, of which \$1637.50 is for "billing
11 services." The court is unclear what these "billing services"
12 consist of or why they cost \$1637.50. Assuming that this expense
13 reflects the time that Price spent preparing billing statements
14 as part of this attorney's fees motion, the court will reduce
15 this expense by three-sevenths, the same reduction it applied to
16 her hourly rate, resulting in a total expense of \$935.71 for
17 billing services and a total of \$1014.61 in expenses. Along with
18 her fees, this results in a total fee award of \$13818.61.¹⁵

19 D. Expenses¹⁶

20 ¹⁵ This award is based on the fee statement that Price
21 submitted on December 5, 2013. If Price has incurred additional
22 hours or expenses litigating this case since that date, she may
23 re-open the matter and submit a comprehensive statement of the
24 time and expense she has incurred on this motion. The court will
25 apply its independent judgment with respect to whether Price is
26 entitled to additional fees and does not require additional
27 briefs or other papers from either side on this issue.

28 ¹⁶ Plaintiffs have also submitted a Bill of Costs pursuant
to Federal Rule of Civil 54(d) and Local Rule 292. However,
these expenses are properly characterized as a part of an award
of attorney's fees, rather than as taxable costs. See Chalmers
v. City of Los Angeles, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986
(noting that "out-of-pocket expenses incurred by an attorney
which would normally be charged to a fee paying client are

1 “Under § 1988, the prevailing party may recover as part
2 of the award of attorney’s fees those out-of-pocket expenses that
3 would normally be charged to a fee paying client.” Dang, 422
4 F.3d at 814 (citations and internal quotation marks omitted).
5 “Such out-of-pocket expenses are recoverable when reasonable.”
6 Id.

7 Defendants contend that plaintiff may not recover
8 expenses under Section 1988 for expert witness fees. (See Defs.’
9 Opp’n at 18.) Subsection 1988(c) permits a prevailing plaintiff
10 in an action under Section 1981 or 1981(a) to recover expert
11 fees. However, a prevailing plaintiff may not recover expert
12 fees in an action under Section 1983. W. Va. Univ. Hosps. v.
13 Casey, 499 U.S. 83, 102 (1991); Ruff v. County of Kings, 700 F.
14 Supp. 2d 1225, 1243 (E.D. Cal. 2010) (Wanger, J.) (noting that
15 “cases are uniform that Section 1988(c) does not apply to a
16 Section 1983 action”). The court will therefore not permit
17 plaintiffs to recover the \$6,420 they incurred for expert witness
18 fees.

19 Defendants also object that plaintiffs cannot recover
20 expenses incurred for the services of Ralph Hernandez, a private
21 investigator, or Joshua Dodds, who provided technical assistance
22
23 recoverable as attorney’s fees” (emphasis added)); Dang, 422 F.3d
24 at 814 (same). Because these expenses comprise a portion of the
25 attorney’s fee award itself, defendants’ objections based on the
26 standards applicable to a Bill of Costs under 28 U.S.C. § 1920,
27 Federal Rule of Civil Procedure 54(d), and Eastern District Local
28 Rule 292 are misplaced. See id. (holding that expenses incurred
for obtaining an abstract of judgment were recoverable under §
1988 notwithstanding the plaintiff’s failure to include this
expense in his bill of costs).

1 with document management and video presentation equipment during
2 the trial. (See Defs.' Opp'n at 18.) Courts have found both
3 types of expenses to be reasonable. See, e.g., Harris v.
4 Marhoefer, 24 F.3d 16, 19-20 (9th Cir. 1994) (holding that
5 expenses incurred for an investigator were compensable under §
6 1988, even if they might not be taxable as costs under 28 U.S.C.
7 § 1920 or applicable local rules); POM Wonderful LLC v. Ocean
8 Spray Cranberries, Inc., Civ. No. 09-565 DDP RZx, 2012 WL
9 4936470, at *1 (C.D. Cal. Oct. 17, 2012) (allowing prevailing
10 defendant to recover costs incurred for trial presentation
11 expenses). There is nothing to indicate that the fees paid to
12 Hernandez and Dodds were unreasonable, and the court will
13 accordingly permit plaintiffs to recover for those expenses.

14 Having reviewed the remainder of the billing entries
15 submitted by plaintiffs, the court determines that the expenses
16 listed are reasonable and of the sort that would ordinarily be
17 charged to a fee-paying client. See Dang, 422 F.3d at 814.
18 Accordingly, the court will permit plaintiffs to recover
19 \$38,626.68 in expenses.¹⁷

20 In sum, the court will award \$314497.73 in attorney's
21 fees, comprised as follows:

22 Adjusted Lodestar: \$349,403.25 x 0.75 = \$262,052.44

23
24 ¹⁷ This figure consists of the following: \$26,449.00 in
25 out-of-pocket costs, including "photocopies, document, exhibit
26 and chart reproduction expenses, postage, service of process
27 fees, investigation expenses, mileage and travel expenses, and
28 long distance telephone calls"; \$5,303.38 for the investigative
services of Ralph Hernandez; \$621.12 for court reporter costs;
and \$6253.18 for costs of video and document management services
at trial. (See Burris Decl. ¶¶ 42-46.)

1 Fees on Fees: \$13818.61 x 1.0 = \$13818.61
2 Expenses: \$38,626.68 x 1.0 = \$38,626.68
3 \$314497.73

4 II. Defendants' Bill of Costs

5 Both Federal Rule of Civil Procedure 54(d)(1) and Local
6 Rule 292(f) permit a prevailing party to tax costs to the losing
7 side. Rule 54(d)(1) "creates a presumption in favor of awarding
8 costs to a prevailing party, but vests in the district court
9 discretion to refuse to award costs." Ass'n of Mex.-Am.
10 Educators v. California, 231 F.3d 572, 591 (9th Cir. 2000) (en
11 banc). Both the Ninth Circuit and numerous judges in this
12 district have held that the court may require a party to bear its
13 own costs "[i]n the event of a mixed judgment." Amarel v.
14 Connell, 102 F.3d 1494, 1523 (9th Cir. 1995) (9th Cir. 1996); see
15 also, e.g., Tubbs v. Sacramento Cnty. Jail, 258 F.R.D. 657, 659
16 (E.D. Cal. 2009 (Karlton, J.)); Endurance Am. Specialty Ins. Co.
17 v. Lance-Kashian & Co., Civ. No. 1:10-1284 LJO DLB, 2011 WL
18 6012213, at *2 (E.D. Cal. Dec. 1, 2011) ("Given the mixed
19 judgment and good faith dispute over difficult issues, an award
20 of costs is unwarranted and each side is to bear its respective
21 costs.").

22 Here, the jury found that two of the three defendants
23 who went to trial were liable under Section 1983, and found that
24 the third defendant, Jeremy Patzer, had acted violently towards
25 the plaintiffs. (Docket No. 165.) And while defendants were
26 technically victorious on every claim but one, that partial
27 success does not mandate an award of costs. See Tubbs, 258
28 F.R.D. at 661 (denying costs to the defendants in a civil rights


1 action when the plaintiff only prevailed on some claims but not
2 others); Cole v. Munoz, Civ. No. 1:09-00476 SAB, 2013 WL 3892955,
3 at *2 (E.D. Cal. July 26, 2013) (declining to award costs when
4 plaintiff prevailed on excessive force claims against two of the
5 three defendants). Accordingly, the court will require
6 defendants to bear their own costs in this action.

7 IT IS THEREFORE ORDERED that:

8 (1) plaintiffs' motion for attorney's fees be, and the
9 same hereby is, GRANTED in the amount of \$314,497.73;

10 (2) defendants' motion for costs be, and the same
11 hereby is, DENIED.

12 Dated: February 24, 2014

13 
14 WILLIAM B. SHUBB
15 UNITED STATES DISTRICT JUDGE
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