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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: MOTION  
FOR SUPPLEMENTAL ATTORNEY'S FEES

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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. In 2013, a jury found that Potts and Jensen had used

1 excessive force in the course of arresting Deocampo and awarded  
2 Deocampo \$50,000 in damages. The court subsequently awarded  
3 plaintiffs \$314,497.73 in attorney's fees pursuant to 42 U.S.C. §  
4 1988. (Docket No. 204.) Plaintiffs now move for a supplemental  
5 award of attorney's fees for: (1) time spent by plaintiff's  
6 counsel, Pamela Y. Price, on litigating the original fees motion;  
7 (2) time spent by plaintiff's counsel addressing a motion for  
8 relief from judgment filed by defendants.

9 As the court explained in its previous Order granting  
10 attorney's fees, plaintiffs are entitled to attorney's fees  
11 because they were the prevailing parties in an action under 42  
12 U.S.C. § 1988(b). Defendants did not dispute that plaintiffs  
13 were entitled to fees, did not appeal the court's Order awarding  
14 fees to plaintiffs, and do not dispute that plaintiffs are  
15 entitled to a supplemental award of fees. Rather, they dispute  
16 the size of the supplemental fee award requested by plaintiffs.

17 Courts typically determine the amount of a fee award  
18 under § 1988 in two stages. First, courts apply the "'lodestar'  
19 method to determine what constitutes a reasonable attorney's  
20 fee." Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th Cir.  
21 2013) (citations omitted). Second, "after computing the lodestar  
22 figure, district courts may adjust that figure pursuant to a  
23 variety of factors." Id. at 1209 (citation and internal  
24 quotation marks omitted); see also Kerr v. Screen Guild Extras,  
25 Inc., 526 F.2d 67, 70 (9th Cir. 1975) (enumerating factors on  
26 which courts may rely in adjusting the lodestar figure). The  
27 Ninth Circuit has emphasized that a district court need not  
28 consider every factor; rather, it must apply the Kerr factors

1 only to the extent that those factors "bear on the reasonableness  
2 of a fee award." Morales v. City of San Rafael, 96 F.3d 359, 361  
3 (9th Cir. 1996).

4 I. Fees for Rule 60(b) Motion

5 After the court awarded plaintiffs attorney's fees,  
6 defendants sought relief from final judgment pursuant to Federal  
7 Rule of Civil Procedure 60(b) on the basis that the judgment and  
8 attorney's fee award were liabilities of the City of Vallejo that  
9 were discharged in bankruptcy. The court denied the motion on  
10 May 21, 2014. Plaintiffs now seek to recover a total of  
11 \$10,422.75 in attorney's fees for time spent opposing the motion.

12 A. Reasonable Number of Hours

13 Under the lodestar method, "a district court must start  
14 by determining how many hours were reasonably expended on the  
15 litigation," Moreno v. City of Sacramento, 534 F.3d 1106, 1111  
16 (9th Cir. 2008), and "should exclude hours 'that are excessive,  
17 redundant, or otherwise unnecessary,'" McCown v. City of Fontana,  
18 565 F.3d 1097, 1102 (9th Cir. 2009) (quoting Hensley v.  
19 Eckerhart, 461 U.S. 424, 434 (1983)). That standard is qualified  
20 by the Ninth Circuit's admonition that, as a general rule, "the  
21 court should defer to the winning lawyer's professional judgment  
22 as to how much time he was required to spend on the case."  
23 Moreno, 534 F.3d at 1112.

24 Plaintiffs' counsel John Burris indicates that his firm  
25 staffed four attorneys on this matter and that those attorneys  
26 spent a total of 43.15 hours opposing defendants' Rule 60(b)  
27 motion. Defendants argue that this time should be reduced  
28 because there was no need to staff four attorneys on the case or

1 to require multiple attorneys to do the same work, such as  
2 reviewing pleadings, conducting legal research, or drafting an  
3 opposition to defendants' Rule 60(b) motion. But as numerous  
4 district courts have recognized, staffing multiple attorneys on a  
5 single task may improve a party's chance of success in litigation  
6 and does not always constitute unnecessary duplication of effort.  
7 See, e.g., PSM Holding Corp. v. Nat'l Farm Fin. Corp., 743 F.  
8 Supp. 2d 1136, 1157 (C.D. Cal. 2010) ("[D]ivision of  
9 responsibility may make it necessary for more than one attorney  
10 to attend activities such as depositions and hearings. Multiple  
11 attorneys may be essential for planning strategy, eliciting  
12 testimony or evaluating facts or law." (citation and internal  
13 quotation marks omitted)); United States v. City & County of San  
14 Francisco, 748 F. Supp. 1416, 1421 (N.D. Cal. 1990) (noting that  
15 "the presence of several attorneys at strategy sessions for  
16 complex civil rights class actions may be crucial to the case").  
17 Having independently reviewed plaintiffs' billing entries, the  
18 court cannot identify a single one that is sufficiently excessive  
19 to justify second-guessing plaintiffs' "professional judgment"  
20 about how to allocate attorney time. Moreno, 534 F.3d at 1112.

21 Defendants then argue that the court should reduce the  
22 hours billed by plaintiffs' attorneys because many of those hours  
23 were improperly block billed. "Block billing is the time-keeping  
24 method by which each lawyer and legal assistant enters the total  
25 . . . time spent working on a case, rather than itemizing the  
26 time expended on specific tasks." Welch v. Metro. Life Ins. Co.,  
27 480 F.3d 942, 945 n.2 (9th Cir. 2007) (citation and internal  
28 quotation marks omitted). Although a court may reduce hours that

1 are block-billed, see id. at 948, it may also choose not to  
2 reduce hours that are purportedly block billed if the  
3 corresponding time entries "are detailed enough for the [c]ourt  
4 to assess the reasonableness of the hours billed." Campbell v.  
5 Nat'l Passenger R.R. Corp., 718 F. Supp. 2d 1093, 1103 (N.D. Cal.  
6 2010).

7           While the court's prior Order granting attorney's fees  
8 identified numerous instances of block billing, the supplemental  
9 billing statements submitted by plaintiffs are largely free of  
10 block-billed entries. On the few occasions where a single  
11 billing entry contains multiple items, those items appear to be  
12 related parts of a single task. For instance, one of Burris's  
13 time entries consists of two hours for "review[ing] and  
14 consider[ing]" plaintiffs' opposition and a telephone conference  
15 with Curry regarding that opposition. (Docket No. 217-2.)  
16 Likewise, Curry billed five hours for "review[ing] and  
17 revis[ing]" plaintiff's opposition, as well as "creat[ing]  
18 tables" and "review[ing] and confirm[ing] citations." (Id.)

19           This is not the sort of "block billing" that permits  
20 attorneys to artificially pad their billed hours. See Yeager v.  
21 Bowlin, Civ. No. 2:08-102 WBS JFM, 2010 WL 1689225, at \*1 (E.D.  
22 Cal. Apr. 26, 2010), aff'd, 495 Fed. App'x 780 (9th Cir. 2012)  
23 (noting that block billing is problematic because it "hides  
24 accountability and may increase time by 10% to 30% by lumping  
25 together tasks" (citation and internal quotation marks omitted)).  
26 The court will therefore apply no reduction to hours that  
27 defendants characterize as block-billed.

28           In sum, the court finds that attorney DeWitt Lacy

1 reasonably billed 11.55 hours, attorney Ayana Curry reasonably  
2 billed 22.1 hours, attorney Benjamin Nisenbaum reasonably billed  
3 5.05 hours, and Burris reasonably billed 3.6 hours.

4 B. Reasonable Hourly Rate

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

17 The court previously determined, and the parties agree,  
18 that Burris is entitled to a reasonable hourly rate of \$400 and  
19 that Lacy is entitled to a reasonable hourly rate of \$175. Curry  
20 and Nisenbaum were admitted to the California bar in 2001 and  
21 2002, respectively, and have practiced consistently since then.  
22 Courts in this district have found that an hourly rate between  
23 \$250 and \$280 is reasonable for attorneys with ten or more years  
24 of experience in civil rights cases. See, e.g., Hall v. City of  
25 Fairfield, Civ. No. 2:10-508 DAD, 2014 WL 1286001, at \*6-7 (E.D.  
26 Cal. Mar. 31, 2014) (finding that an hourly rate of \$260 was  
27 appropriate for an attorney with twelve years of experience);  
28 Jones v. County of Sacramento, Civ. No. 2:09-1025 DAD, 2011 WL

1 3584332, at \*9-10 (E.D. Cal. Aug. 12, 2011) (finding that an  
2 hourly rate of \$250 was appropriate for an attorney with ten  
3 years of civil litigation experience); Cal. Pro-Life Council,  
4 Inc. v. Randolph, Civ. No. 2:00-1698 FCD GGH, 2008 WL 4453627, at  
5 \*4 (E.D. Cal. Sep. 30, 2008) (noting that prevailing rates in  
6 Sacramento for partners with over ten years of experience range  
7 between \$260 and \$280).

8           While the prevailing hourly rate for attorneys with ten  
9 or more years of experience is between \$250 and \$280, the court  
10 previously awarded attorney Gayla Libet, an attorney with almost  
11 three decades of experience, an hourly rate of \$280 in this case;  
12 it would be excessive to award Curry and Nisenbaum, who have  
13 practiced for two decades less than Libet, the same hourly rate.  
14 Accordingly, the court determines that both Curry and Nisenbaum  
15 are entitled to a reasonable hourly rate of \$250.

16           C. Adjustments to the Lodestar

17           Once the court has computed the lodestar, there is a  
18 “‘strong presumption’ that the lodestar is the reasonable fee.”  
19 Crawford v. Astrue, 586 F.3d 1142, 1149 (9th Cir. 2009) (quoting  
20 City of Burlington v. Dague, 505 U.S. 557, 562 (1992)). However,  
21 the Ninth Circuit has emphasized that the district court must  
22 consider “whether it is necessary to adjust the presumptively  
23 reasonable lodestar figure on the basis of the Kerr factors that  
24 are not already subsumed in the initial lodestar calculation.”  
25 Morales, 96 F.3d at 363-64 (citations omitted). Those factors  
26 include:

27           (1) the time and labor required, (2) the novelty and  
28           difficulty of the questions involved, (3) the skill  
            requisite to perform the legal service properly, (4)

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

11  
12 Kerr, 526 F.2d at 670. "The court should consider the factors  
13 established by Kerr, but need not discuss each factor." Eiden v.  
14 Thrifty Payless Inc., 407 F. Supp. 2d 1165, 1168 n.4 (E.D. Cal.  
15 2005) (citing Sapper v. Lenco Blade, Inc., 704 F.2d 1069, 1073  
16 (9th Cir. 1983)).

17 Here, the Rule 60(b) motion filed by defendants sought  
18 relief from the judgment and the attorney's fee award, which  
19 collectively amount to over \$364,000, on the basis that they were  
20 liabilities of the City of Vallejo and were thereby discharged in  
21 its Chapter 9 bankruptcy. That motion not only threatened the  
22 viability of the entire judgment, but raised critical issues at  
23 the intersection of bankruptcy and civil rights law that demanded  
24 the expertise of experienced civil rights attorneys. Defendants  
25 do not offer any reasons why the Kerr factors militate in favor  
26 of reducing a supplemental attorney's fee award. Accordingly,  
27 the court need not apply any adjustment to the lodestar.

28 In sum, the court finds that Burris reasonably billed  
3.6 hours at an hourly rate of \$400, that Curry reasonably billed  
22.1 hours at an hourly rate of \$250, that Nisenbaum reasonably  
billed 5.05 hours at an hourly rate of \$250, and that Lacy  
reasonably billed 11.55 hours at an hourly rate of \$175. This  
results in an attorney's fee award of \$10,248.75, computed as



1 follows:

2	Burris:	3.6	x	\$400	=	\$1,440.00
3	Curry:	22.1	x	\$250	=	\$5,525.00
4	Nisenbaum:	5.05	x	\$250	=	\$1,262.50
5	Lacy:	11.55	x	\$175	=	<u>\$2,021.25</u>
6						\$10,248.75

7 II. Supplemental Fees on Fees

8 In its previous Order granting attorney's fees, the  
9 court stated that plaintiff's attorney Pamela Y. Price was  
10 entitled to recover "fees on fees" for her work litigating the  
11 attorney's fees disputes in this case, including for work  
12 performed after she had submitted her initial billing statements  
13 but before the court could determine plaintiffs' entitlement to  
14 attorney's fees. The court also determined that Price was  
15 entitled to a reasonable hourly rate of \$400 for these services  
16 in light of her experience and credentials. The court directed  
17 Price to submit a supplemental declaration outlining the number  
18 of hours she spent on the fees motion after December 5, 2013.

19 Price has submitted a consolidated billing statement  
20 reflecting time spent on three basic items: (1) additional  
21 services involved in litigating the original fees motion; (2)  
22 time spent preparing the supplemental declaration ordered by the  
23 court; and (3) time spent on the present motion for supplemental  
24 attorney's fees. While defendants contend that the fees Price  
25 billed for these items is excessive, the court has reviewed her  
26 billing statement and finds that none of the entries she has  
27 recorded are excessive or reflect improper billing judgment.

28 Accordingly, the court finds that Price is entitled to

1 \$10,700 in supplemental attorney's fees, reflecting 26.75 hours  
2 of work at a reasonable hourly rate of \$400. Combined with the  
3 supplemental fee award of \$10,248.75 for time spent litigating  
4 the Rule 60(b) motion, this results in a total attorney's fee  
5 award of \$20,748.75.

6 IT IS THEREFORE ORDERED that plaintiffs' motion for  
7 supplemental attorney's fees be, and the same hereby is, GRANTED  
8 in the amount of \$20,748.75. The August 25, 2014 hearing date is  
9 vacated.

10 Dated: August 20, 2014

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12 WILLIAM B. SHUBB  
13 UNITED STATES DISTRICT JUDGE  
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