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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

AMENDED 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 plaintiffs'  
6 counsel, Pamela Y. Price, on litigating the original fees motion;  
7 (2) time spent by plaintiffs' 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. (Docket No. 211.) Plaintiffs now seek to recover  
11 a total of \$10,422.75 in attorney's fees for time spent opposing  
12 the motion.

13 A. Reasonable Number of Hours

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

25 Plaintiffs' counsel John Burris indicates that his firm  
26 staffed four attorneys on this matter and that those attorneys  
27 spent a total of 43.15 hours opposing defendants' Rule 60(b)  
28 motion. Defendants argue that this time should be reduced

1 because there was no need to staff four attorneys on the case or  
2 to require multiple attorneys to do the same work, such as  
3 reviewing pleadings, conducting legal research, or drafting an  
4 opposition to defendants' Rule 60(b) motion. But as numerous  
5 district courts have recognized, staffing multiple attorneys on a  
6 single task may improve a party's chance of success in litigation  
7 and does not always constitute unnecessary duplication of effort.  
8 See, e.g., PSM Holding Corp. v. Nat'l Farm Fin. Corp., 743 F.  
9 Supp. 2d 1136, 1157 (C.D. Cal. 2010) ("[D]ivision of  
10 responsibility may make it necessary for more than one attorney  
11 to attend activities such as depositions and hearings. Multiple  
12 attorneys may be essential for planning strategy, eliciting  
13 testimony or evaluating facts or law." (citation and internal  
14 quotation marks omitted)); United States v. City & County of San  
15 Francisco, 748 F. Supp. 1416, 1421 (N.D. Cal. 1990) (noting that  
16 "the presence of several attorneys at strategy sessions for  
17 complex civil rights class actions may be crucial to the case").  
18 Having independently reviewed plaintiffs' billing entries, the  
19 court cannot identify a single one that is sufficiently excessive  
20 to justify second-guessing plaintiffs' "professional judgment"  
21 about how to allocate attorney time. Moreno, 534 F.3d at 1112.

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

1 quotation marks omitted). Although a court may reduce hours that  
2 are block-billed, see id. at 948, it may also choose not to  
3 reduce hours that are purportedly block billed if the  
4 corresponding time entries "are detailed enough for the [c]ourt  
5 to assess the reasonableness of the hours billed." Campbell v.  
6 Nat'l Passenger R.R. Corp., 718 F. Supp. 2d 1093, 1103 (N.D. Cal.  
7 2010).

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

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

1 In sum, the court finds that attorney DeWitt Lacy  
2 reasonably billed 11.55 hours, attorney Ayana Curry reasonably  
3 billed 22.1 hours, attorney Benjamin Nisenbaum reasonably billed  
4 5.05 hours, and Burris reasonably billed 3.6 hours.

5 B. Reasonable Hourly Rate

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

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

1 Jones v. County of Sacramento, Civ. No. 2:09-1025 DAD, 2011 WL  
2 3584332, at \*9-10 (E.D. Cal. Aug. 12, 2011) (finding that an  
3 hourly rate of \$250 was appropriate for an attorney with ten  
4 years of civil litigation experience); Cal. Pro-Life Council,  
5 Inc. v. Randolph, Civ. No. 2:00-1698 FCD GGH, 2008 WL 4453627, at  
6 \*4 (E.D. Cal. Sep. 30, 2008) (noting that prevailing rates in  
7 Sacramento for partners with over ten years of experience range  
8 between \$260 and \$280).

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

17           C. Adjustments to the Lodestar

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

28           (1) the time and labor required, (2) the novelty and

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

13 Kerr, 526 F.2d at 670. "The court should consider the factors  
14 established by Kerr, but need not discuss each factor." Eiden v.  
15 Thrifty Payless Inc., 407 F. Supp. 2d 1165, 1168 n.4 (E.D. Cal.  
16 2005) (citing Sapper v. Lenco Blade, Inc., 704 F.2d 1069, 1073  
17 (9th Cir. 1983)).

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

29 In sum, the court finds that Burris reasonably billed  
30 3.6 hours at an hourly rate of \$400, that Curry reasonably billed  
31 22.1 hours at an hourly rate of \$250, that Nisenbaum reasonably  
32 billed 5.05 hours at an hourly rate of \$250, and that Lacy  
33 reasonably billed 11.55 hours at an hourly rate of \$175. This



1 results in an attorney's fee award of \$10,248.75, computed as  
2 follows:

3	Burris:	3.6	x	\$400	=	\$1,440.00
4	Curry:	22.1	x	\$250	=	\$5,525.00
5	Nisenbaum:	5.05	x	\$250	=	\$1,262.50
6	Lacy:	11.55	x	\$175	=	<u>\$2,021.25</u>
7						\$10,248.75

8 II. Supplemental Fees on Fees

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

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

1           Accordingly, the court finds that Price is entitled to  
2 \$11,620.00 in supplemental attorney's fees, reflecting 29.05  
3 hours of work at a reasonable hourly rate of \$400. Combined with  
4 the supplemental fee award of \$10,248.75 for time spent  
5 litigating the Rule 60(b) motion, this results in a total  
6 attorney's fee award of \$21,868.75.

7           IT IS THEREFORE ORDERED that plaintiffs' motion for  
8 supplemental attorney's fees be, and the same hereby is, GRANTED  
9 in the amount of \$21,868.75.

10 Dated: August 25, 2014

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WILLIAM B. SHUBB  
13 UNITED STATES DISTRICT JUDGE  
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