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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN EDWARDS; NANCY EDWARDS;
ENVIRONMENTAL LAW FOUNDATION,

Plaintiffs,

No. CIV S-07-2153 GEB EFB

vs.

CITY OF COLFAX,

Defendant.

ORDER ON MOTION FOR
ATTORNEYS FEES

_____ /
This closed action is before the undersigned pursuant to a November 2008 settlement agreement entered into between the parties and a January 23, 2009 order stating “that the District Court, through Magistrate Brennan, shall retain jurisdiction over Civil Case No. 2:07-CV-02153 GEB (EFB) for the sole purpose of enforcing compliance by the Parties with the terms of the Agreement attached as Exhibit A to the Parties’ Stipulation to Dismiss with Prejudice” (“Settlement Agreement”). Dckt. No. 42.

The action resurfaced before this court in February 2010 when plaintiffs filed a motion for an order finding defendant in civil contempt for violation of the Settlement Agreement. Dckt. No. 43. Defendant opposed the motion and filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) or for declaratory relief. Dckt. No. 52. A hearing was held as to both motions on April 14, 2010, and on April 22, 2010, the court issued

1 an order (1) denying defendant’s motion for relief from judgment; (2) construing plaintiffs’
2 motion for an order finding defendant in civil contempt as a motion for an order enforcing the
3 Settlement Agreement, and granting that motion; (3) stating that “[p]laintiffs will be entitled to
4 recover some of the stipulated penalties plaintiffs seek pursuant to the [S]ettlement [A]greement,
5 reasonable attorney’s fees, and appropriate injunctive relief to compel defendant’s compliance
6 with the [S]ettlement [A]greement”; and (4) scheduling an evidentiary hearing to determine the
7 appropriate injunctive relief. Dckt. No. 71. The order further provided that “[a]fter the
8 evidentiary hearing, the undersigned will determine what injunctive relief is appropriate, as well
9 as what monetary penalties to award to plaintiffs and how to allocate those penalties, and what
10 attorney fees are reasonable to award to plaintiffs.” *Id.*

11 However, on the day of the scheduled evidentiary hearing, the parties advised the court
12 that they wished to vacate the evidentiary hearing and conduct further settlement negotiations.
13 Dckt. No. 104. Therefore, the evidentiary hearing was vacated and the undersigned held
14 settlement discussions with the parties. *Id.* The settlement discussions continued over the course
15 of several months and the undersigned met with the parties on four separate occasions. Dckt.
16 Nos. 104, 106, 108, 110. Finally, on October 12, 2010, the parties filed a “Proposed Order Re:
17 Compliance with Settlement Agreement” resolving most of the issues raised in plaintiffs’ motion
18 for enforcement of the Settlement Agreement and raised during the negotiations related to that
19 motion. Dckt. No. 111. The Order Re: Compliance with Settlement Agreement was approved
20 by the undersigned on November 2, 2010. Dckt. No. 113.

21 Although the Order Re: Compliance with Settlement Agreement addresses nearly all of
22 the issues raised in plaintiffs’ motion, it does not address plaintiffs’ request for attorney’s fees.
23 Specifically, the order states that “Plaintiffs’ request for fees and costs incurred to date is deemed
24 submitted and will be addressed in a separate order.” Dckt. No. 113, ¶ 32.

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1 The undersigned has already determined that plaintiffs are entitled to reasonable costs
2 and attorney's fees pursuant to the Settlement Agreement.¹ See Dckt. No. 71. Therefore, the
3 issue that remains for decision is the amount of *reasonable* fees to award to plaintiffs.

4 Plaintiffs seek \$459,870.84 in total fees and costs, and have submitted billing entries
5 supporting the fees and costs requested. The amount requested is based on the following:

- 6 • \$336,881.00 in attorney's fees billed by Lawyers for Clean Water,²
7 based on the following hours and billable rates:
 - 8 • Daniel Cooper: 270.35 hours at a rate of \$550.00 per hour,
9 for a total of \$148,692.50;
 - 10 • Samantha Williams: 462.46 hours at a rate of \$350.00 per
11 hour, for a total of \$161,861.00;
 - 12 • Layne Friedrich: 4.67 hours at a rate of \$500.00 per hour,
13 for a total of \$2,335.00;
 - 14 • Drev Hunt: 2.55 hours at a rate of \$350.00 per hour, for a
15 total of \$892.50;
 - 16 • Martin McCarthy: 9.30 hours at a rate of \$500.00 per hour,
17 for a total of \$4,650.00;
 - 18 • Liz Crosson: 12.90 hours at a rate of \$290.00 per hour, for
19 a total of \$3,741.00;
 - 20 • Ashley Eagle-Gibbs: 52.08 hours at a rate of \$100.00 per
21 hour, for a total of \$5,208.00;
 - 22 • Caroline Koch: 67.27 hours at a rate of \$100.00 per hour,
23 for a total of \$6,727.00;
 - 24 • Meghan Strauss: 27.74 hours at a rate of \$100.00 per hour,
25 for a total of \$2,774.00;
- 26 • \$22,350.00 in attorney's fees billed by Donald Mooney, based on
59.6 hours at a rate of \$375.00 per hour;³
- \$91,201.69 in expert costs; and
- \$9,438.16 in other costs.

21 ¹ The Settlement Agreement provides: "If the Plaintiffs are the prevailing or
22 substantially prevailing party in the Formal Dispute Resolution proceeding, then [defendant]
23 shall pay Plaintiffs' reasonable costs and attorney's fees incurred in the proceeding consistent
24 with § 505 of the Clean Water Act, 33 U.S.C. § 1365. If the Parties cannot agree on the payment
25 of Plaintiffs' reasonable costs and fees, then Plaintiffs can file a motion with Judge Brennan for
26 the award of such fees." Dckt. No. 39, ¶ 67.

24 ² This total was calculated after billing judgment was applied by Lawyers for Clean
25 Water ("LCW"). LCW also incurred an additional \$38,571.00 in unbilled fees.

26 ³ This total was calculated after billing judgment was applied by Mooney. Mooney also
incurred an additional \$3,112.50 in unbilled fees.

1 I. Attorney's Fees

2 In calculating an appropriate fee award, the court must first “calculate the ‘lodestar
3 figure’ by taking the number of hours reasonably expended on the litigation and multiplying it
4 by a reasonable hourly rate.” *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000)
5 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983)). This lodestar figure is
6 presumptively reasonable and should only be enhanced or reduced in “rare and exceptional
7 cases.” *Id.* However, the court may adjust the lodestar figure if various factors overcome the
8 presumption of reasonableness. *Hensley*, 461 U.S. at 433-34. Those factors include:

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

15 *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.8 (9th Cir. 1996) (quoting *Kerr v. Screen*
16 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)).

17 In determining the number of hours reasonably expended, a court has “discretion to ‘trim
18 fat’ from, or otherwise reduce, the number of hours claimed to have been spent on the case.”
19 *Soler v. G & U, Inc.*, 801 F. Supp. 1056, 1060 (S.D.N.Y. 1992) (citing *N.Y. State Ass’n for*
20 *Retarded Children v. Carey*, 711 F.2d 1136, 1147-48 (2d Cir. 1983)). Time expended on work
21 deemed “excessive, redundant, or otherwise unnecessary” shall not be compensated. *See Gates*
22 *v. Deukmejian*, 987 F.2d 1392, 1399 (9th Cir. 1992), *as amended on denial of reh’g*, (1993)
23 (quoting *Hensley*, 461 U.S. at 433-34). In determining a reasonable hourly rate, the court
24 considers the relevant community and the prevailing hourly rate in that community for similar
25 services by attorneys of comparable skill and experience. *See Camacho v. Bridgeport Fin., Inc.*,
26 523 F.3d 973 (9th Cir. 2008).

1 In opposition to plaintiffs’ request for immediate payment of their fees and costs,
2 defendant characterizes plaintiffs’ attorney and expert fees and costs as “extraordinary” and
3 argues that the fees are: (1) “precluded by Paragraph 58 of the Settlement Agreement, which
4 limits recoverable fees and costs for compliance monitoring and the meet and confer process
5 during informal dispute resolution to \$15,000 over the life of the Agreement”; (2) “duplicative of
6 fees already paid to Plaintiffs’ attorneys by the City pursuant to Paragraph 58 of the Settlement
7 Agreement”; (3) “reflective of an excessive number of hours, particularly by Plaintiffs’ attorney
8 Samantha Williams, spent on motion related activities”;⁴ (4) “at rates far in excess of reasonable
9 or prevailing rates for similar work performed in the greater metropolitan Sacramento area where
10 the Eastern District Court resides”; and (5) “reimbursement for excessive and unreasonable
11 costs.” Dckt. No. 78 at 5.⁵

12 A review of the billing entries submitted by plaintiffs in support of their fee request
13 reveals that the majority of the fees requested were necessarily and reasonably incurred as a
14 result of plaintiffs’ efforts to seek compliance with the Settlement Agreement. However, the
15 court will address each of defendant’s contentions regarding plaintiffs’ fee request in turn.

16 A. Reasonable Number of Hours

17 1. Fees Precluded by Paragraph 58 of the Settlement Agreement

18 Defendant contends that some of the fees that plaintiffs seek are “precluded by Paragraph
19 58 of the Settlement Agreement, which limits recoverable fees and costs for compliance
20 monitoring and the meet and confer process during informal dispute resolution to \$15,000 over
21 the life of the Agreement.” Dckt. No. 78 at 6-7. According to defendant, “Paragraph 58
22 provides for specified compensation up to the point in which informal negotiations do not
23

24 ⁴ Defendant also contends that plaintiffs’ attorney fees resulting from their unsuccessful
25 *ex parte* application for immediate payment of their attorney fees should be denied since such
26 fees were unnecessarily incurred. Dckt. No. 101 at 10.

⁵ The page citations are to the page numbers assigned by the Case Management and
Electronic Case Filing system listed at the top of the document.

1 resolve the issue, and a party actually invokes the Formal Dispute Resolution process in
2 Paragraph 67. Once the Formal Dispute Resolution process is invoked, which, in this case, was
3 triggered by the Plaintiffs' February 17, 2010 Motion for Contempt, then and only then do the
4 fee and cost provisions of Paragraph 67 apply." *Id.* at 7. Accordingly, defendant argues that
5 plaintiffs' fees from March through December 10 of 2009, which defendant contends amount to
6 \$40,741.86 for 107.3 hours, should be capped at \$15,000. *Id.*

7 Plaintiffs counter that defendant's interpretation of Paragraph 58 is "inconsistent with the
8 Settlement Agreement's dispute resolution mechanism and with feeshifting pursuant to the Clean
9 Water Act." Dckt. No. 79 at 10. According to plaintiffs, the limited compliance oversight
10 budget in Paragraph 58 was "based on the assumption that, having settled this action, [defendant]
11 would substantially comply with the Court-ordered terms." *Id.* at 10-11. Plaintiffs contend that
12 the fund was created "for administrative compliance oversight to take place over the Settlement
13 Agreement's five-year term." *Id.* According to plaintiffs' interpretation of the Settlement
14 Agreement, if plaintiffs discovered non-compliance, they could invoke the informal dispute
15 resolution process under Paragraph 66 of the Settlement Agreement and if defendant failed to
16 come into compliance, they could then seek the Court's intervention via Paragraph 67's formal
17 dispute resolution process. *Id.* at 11. According to plaintiffs, "[a]s a prerequisite to the formal
18 dispute resolution process, fees and costs incurred in informal dispute resolution are
19 compensable if formal dispute resolution is required." *Id.* Therefore, plaintiffs contend that all
20 fees that they billed after concluding that Court intervention was necessary to compel
21 compliance in May 2009, even those spent meeting and conferring with defendant, are covered
22 by Paragraph 67 as part of formal dispute resolution. *Id.* at 11-12.

23 Plaintiffs further contend that "[e]ven applying [defendant]'s narrow interpretation of the
24 Settlement Agreement, [defendant] overestimates the fees and costs that are attributed to the
25 informal dispute resolution process." *Id.* at 12. According to plaintiffs, although defendant
26 "arbitrarily assigns December 10, 2009 as the date that Plaintiffs began preparing the contempt

1 motion, . . . Plaintiffs incurred significant fees and costs prior to December 10 in preparing the
2 contempt motion and supporting pleadings.” *Id.* “For example, in October and November of
3 2009 Plaintiffs reviewed [defendant]’s self-monitoring reports for violations, and prepared the
4 violations table that eventually was submitted as Exhibit KK to the Cooper Contempt
5 Declaration. . . . Thus even under [defendant]’s interpretation of the Settlement Agreement, at
6 most \$29,922.00 in fees and costs are attributable to informal dispute resolution, and all
7 remaining fees are compensable under paragraph 67.” *Id.*

8 The court begins with the language of the document. Paragraph 58 of the Settlement
9 Agreement provides: “To compensate Plaintiffs for time to be spent by legal staff or technical
10 consultants reviewing compliance reports and any other documents, or participating in the meet
11 and confer process under this Agreement[, defendant] shall pay Plaintiffs’ counsel the amount so
12 incurred up to a cap of Fifteen Thousand Dollars (\$15,000) for the life of this Agreement”
13 Dckt. No. 39-1, ¶ 58. Later in the document, paragraph 67 provides that “[i]f Plaintiffs are the
14 prevailing or substantially prevailing party in the Formal Dispute Resolution proceeding, then
15 [defendant] shall pay Plaintiffs’ reasonable costs and attorney’s fees incurred in the proceeding
16 consistent with § 505 of the Clean Water Act, 33 U.S.C. §1365.” *Id.*, ¶ 67. Both paragraphs
17 must be given meaning.

18 Paragraphs 58 and 67, when read together, contemplate that the \$15,000 cap applies to all
19 attorney and consultant fees incurred reviewing compliance reports and any other documents, or
20 participating in the meet and confer process, up until plaintiffs commenced the formal dispute
21 resolution process. Indisputably, plaintiffs initiated such a formal process. The court finds that
22 the triggering point for Paragraph 67 was the determination by plaintiffs in late 2009 that the
23 formal dispute resolution process was imminent and their resulting commencement of research
24 and drafting of pleadings and other supporting documents in connection with that process.
25 Therefore, all attorney’s and consultant fees spent through December 10, 2009, as argued by
26 defendant, will be capped at \$15,000, except those spent preparing for and/or drafting pleadings

1 and other supporting documents in connection with the formal dispute resolution process,
2 including the violations table that was submitted in support of the motion for contempt, which
3 the undersigned finds are fees that were incurred “in the Formal Dispute Resolution proceeding”
4 and are therefore covered by Paragraph 67 of the Settlement Agreement.

5 The court has calculated that a total of \$39,265 in attorney’s fees were incurred through
6 December 10, 2009: \$6,902.50 for Daniel Cooper (12.55 hours); \$23,313.50 for Samantha
7 Williams (66.61 hours); \$270.00 for Layne Friedrich (0.54 hours); \$332.50 for Drevet Hunt
8 (0.95 hours); \$270.00 for Ashley Eagle-Gibbs (2.7 hours); \$414.00 for Meghan Strauss (4.14
9 hours); and \$7,762.50 for Donald Mooney (20.7 hours). An additional \$2,064.36 in consultant
10 fees were incurred through December 10, 2009 by Carpenter Environmental Associates, Inc.
11 Therefore, a total of \$41,329.36 in attorney’s and consultant fees were incurred through
12 December 10, 2009. All of those fees are capped at \$15,000, except for the following, which the
13 undersigned finds were incurred preparing for and/or drafting pleadings and other supporting
14 documents in connection with the formal dispute resolution process and which total \$10,628.50:

- 15 • 0.5 hours spent by Daniel Cooper on 11/9/09 (\$275.00);
- 16 • 0.3 hours spent by Daniel Cooper on 11/18/09 (\$165.00);
- 17 • 1.2 hours spent by Samantha Williams on 10/27/09 (\$420.00);
- 18 • 1.2 hours spent by Samantha Williams on 10/27/09 (\$420.00);
- 19 • 2.9 hours spent by Samantha Williams on 10/27/09 (\$1015.00);
- 20 • 0.2 hours spent by Samantha Williams on 10/27/09 (\$70.00);
- 21 • 0.75 hours spent by Samantha Williams on 10/29/09 (\$262.50);
- 22 • 1.2 hours spent by Samantha Williams on 10/29/09 (\$420.00);
- 23 • 1.55 hours spent by Samantha Williams on 10/30/09 (\$542.50);
- 24 • 0.5 hours spent by Samantha Williams on 10/30/09 (\$175.00);
- 25 • 0.76 hours spent by Samantha Williams on 10/30/09 (\$266.00);
- 26 • 0.1 hours spent by Samantha Williams on 11/2/09 (\$35.00);
- 1.15 hours spent by Samantha Williams on 11/2/09 (\$402.50);
- 0.1 hours spent by Samantha Williams on 11/2/09 (\$35.00);
- 0.5 hours spent by Samantha Williams on 11/3/09 (\$175.00);
- 0.65 hours spent by Samantha Williams on 11/3/09 (\$227.50);
- 2.1 hours spent by Samantha Williams on 11/3/09 (\$735.00);
- 0.1 hours spent by Samantha Williams on 11/3/09 (\$35.00);
- 1.2 hours spent by Samantha Williams on 11/4/09 (\$420.00);
- 0.15 hours spent by Samantha Williams on 11/11/09 (\$52.50);
- 0.3 hours spent by Samantha Williams on 11/11/09 (\$105.00);
- 2.5 hours spent by Samantha Williams on 11/11/09 (\$875.00);
- 1.5 hours spent by Samantha Williams on 11/11/09 (\$525.00);

- 0.2 hours spent by Samantha Williams on 11/12/09 (\$70.00);
- 0.75 hours spent by Samantha Williams on 11/12/09 (\$262.50);
- 1.7 hours spent by Samantha Williams on 11/13/09 (\$595.00);
- 1.7 hours spent by Samantha Williams on 11/13/09 (\$595.00);
- 0.75 hours spent by Samantha Williams on 11/13/09 (\$262.50);
- 1.2 hours spent by Samantha Williams on 11/16/09 (\$420.00);
- 0.1 hours spent by Samantha Williams on 11/18/09 (\$35.00);
- 0.1 hours spent by Samantha Williams on 11/18/09 (\$35.00);
- 1.2 hours spent by Samantha Williams on 12/8/09 (\$420.00);
- 0.1 hours spent by Samantha Williams on 12/10/09 (\$35.00);
- .07 hours spent by Layne Friedrich on 10/27/09 (\$35.00);
- .07 hours spent by Layne Friedrich on 11/3/09 (\$35.00);
- .05 hours spent by Layne Friedrich on 11/10/09 (\$25.00);
- 0.3 hours spent by Daniel Mooney on 11/3/09 (\$112.50); and
- 0.1 hours spent by Daniel Mooney on 11/11/09 (\$37.50).

Accordingly, because \$30,700.86 in attorney’s fees are covered by the \$15,000 cap, the attorney’s fee total sought by plaintiffs will be reduced by the difference, \$15,700.86.

Additionally, because \$2064.36 in consultant fees are covered by the \$15,000 cap, and that cap has now been met, the consultant fee total (which is discussed below in Section II regarding costs) will be reduced by \$2064.36.

2. Duplicative of Fees Already Paid

Defendant also contends that plaintiffs’ attorney fees and costs are “extraordinary” in that they are “duplicative of fees already paid to Plaintiffs’ attorneys by the City pursuant to Paragraph 58 of the Settlement Agreement.”⁶ Dckt. No. 78 at 8. Specifically, defendant argues that \$9,029.49 has already been paid to plaintiffs pursuant to Paragraph 58 of the Settlement Agreement (and pursuant to the \$15,000 cap), and that because the \$15,000 cap was “for the life of the Agreement,” defendant should not be ordered to pay any further fees pursuant to Paragraph 58. *Id.* at 9. Defendant then reiterates its argument (which is discussed in Section I.A.1 above) that the court should not award any fees or costs pursuant to Paragraph 67 of the

⁶ Defendant contends that the present motion seeks specific fees that were already paid. The total of those fees is \$5237.50 (based on 1.6 hours for Daniel Cooper and 2.6 hours for Samantha Williams incurred in March 2009; 0.7 hours for Cooper and 0.4 hours for Williams incurred in April 2009; and 1.4 hours for Cooper and 6.15 hours for Williams incurred in May 2009). Dckt. No. 78 at 8; Dckt. No. 78-3, Thorne Decl., Exs. A, B.

1 Settlement Agreement until December 10, 2009. *Id.*

2 Plaintiffs acknowledge that their fee request seeks duplicative payment of fees and costs
3 already paid by defendant between March and May of 2009, but contend that “[t]hese funds will
4 be used to replenish the currently depleted compliance monitoring fund.” Dckt. No. 79 at 13.

5 Plaintiffs request that the fee award “specify that [those] fees and costs will be reimbursed to the
6 compliance monitoring fund for future monitoring of the Settlement Agreement.” *Id.*

7 Because the fee deduction addressed in Section I.A.1 above only reduced fees down to
8 the \$15,000 cap set forth in Paragraph 58 of the Settlement Agreement (and did not address fees
9 already paid as *part of* that \$15,000 amount), and because plaintiffs acknowledge that defendant
10 has already paid plaintiffs \$9,029.49 in fees and costs pursuant to Paragraph 58, plaintiffs’ fee
11 request⁷ will be reduced by an additional \$9,029.49.⁸

12 3. Excessive Number of Hours for Work Performed

13 Additionally, defendant contends that the fees sought are “reflective of an excessive
14 number of hours, particularly by Plaintiffs’ attorney Samantha Williams, spent on motion related
15 activities.” Dckt. No. 78 at 13. Defendant also notes that plaintiffs have billed more than double
16 the number of hours that defendant billed since December 2009 and argues that the disparity
17 between the hours billed by the two sides of this case must be considered when determining a
18 reasonable number of hours for this matter. *Id.*

19 However, the court finds that, regardless of the number of hours billed by defendant’s
20 counsel, the number of hours expended by plaintiffs’ attorneys in this action, and specifically in

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22 ⁷ For ease of calculation herein, the undersigned applies this deduction to plaintiffs’ fee
request and not their cost request.

23 ⁸ Although plaintiffs contend that defendant should still be ordered to pay the \$9,029.49
24 in fees and costs but that the fees should be used to reimburse the compliance monitoring fund,
the undersigned rejects that argument in light of the fact that the parties re-negotiated the terms
25 of the compliance monitoring fund during the recent settlement negotiations. For the same
reason, the undersigned also rejects defendant’s argument that it should not be required to pay
26 any more than the \$9029.49 it has already paid pursuant to Paragraph 58 because the \$15,000
cap was “for the life of the Agreement.”

1 motion related activities, was reasonable and necessary. Plaintiffs prevailed on their motion, and
2 the court finds that the work conducted by plaintiffs' attorneys was necessary in achieving that
3 outcome and, ultimately, the resolution reached by the parties.

4 Moreover, defendant has not met its burden of establishing what fees plaintiffs expended
5 that are unreasonable.⁹ In opposing a fee demand, defendants have the "burden of providing
6 specific evidence" that the hours were unreasonable. *McGrath v. County of Nevada*, 67 F.3d
7 248, 255 (9th Cir. 1995) (quoting *Gates v. Gomez*, 60 F.3d 525, 534 (9th Cir. 1995)).
8 "Conclusory and unsubstantiated objections are not sufficient to warrant a reduction in fees."
9 *Lucas v. White*, 63 F. Supp.2d 1046, 1057-1058 (N.D. Cal. 1999). Accordingly, other than the
10 fee reductions discussed above, the undersigned finds that plaintiffs are entitled to recover fees
11 for the remainder of the hours stated in their fee request.

12 B. Reasonable Hourly Rates

13 Defendant argues that the hourly rates plaintiffs seek are "far in excess of reasonable or
14 prevailing rates for similar work performed in the greater metropolitan Sacramento area where
15 the Eastern District Court resides." Dckt. No. 78 at 5. Defendant contends that the hourly rates
16 are unreasonable and excessive, and should therefore be reduced. *Id.* at 9-12.

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19 ⁹ Although defendant contends that plaintiffs' attorney fees resulting from their
20 unsuccessful *ex parte* application for immediate payment of their attorney fees should be denied
21 since such fees were unnecessary, Dckt. No. 101 at 10, as noted in this court's order denying the
22 *ex parte* request, plaintiffs filed the request in light of their limited financial resources and their
23 concern regarding defendant's ability to pay any fee award. *See* Dckt. No. 92 at 2. Although the
24 request was denied, the court noted that it was "sympathetic to plaintiffs' predicament, especially
25 in light of defendant's many failures to comply with the settlement agreement entered into in this
26 action." *Id.* Had defendant complied with the original settlement agreement, the fees for
compelling compliance would not have been necessary. Additionally, nearly all of plaintiffs'
and defendant's arguments regarding the recoverability of attorney's fees and costs in this action
were made in the briefs submitted in connection with the *ex parte* application. *See* Dckt. Nos. 78
and 79; *see also* Dckt. Nos. 74-76; Nos. 81-84. Therefore, those documents were highly relevant
to the issue of attorney's fees and costs *generally*, and not just plaintiffs' request for early
payment of those fees. Because defendant has not shown that the fees related to that *ex parte*
request, which were incurred as part of the formal dispute resolution proceeding, were
unreasonable, defendant's request to exclude those fees is denied.

1 Both parties agree that for the purposes of an attorney’s fees motion, “the district court
2 should be guided by the rate prevailing in the community for similar work performed by
3 attorneys of comparable skill, experience, and reputation.” *Chalmers v. City of Los Angeles*, 796
4 F.2d. 1205, 1211 (9th Cir. 1986) (citing *Blum v. Stevenson*, 465 U.S. 886, 895 & n.11 (1984)).

5 In this case, although plaintiffs seek rates comparable to those charged in San Francisco,
6 rather than Sacramento, which is the local forum. Although the court acknowledges that rates in
7 Sacramento are typically below those charged in the San Francisco area, plaintiffs have
8 adequately demonstrated that Sacramento counsel was unavailable to plaintiffs. *See Gates v.*
9 *Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992) (San Francisco rates awarded in Eastern
10 District of California where plaintiff demonstrated that the suit required experienced and
11 sophisticated counsel, and skilled counsel was unavailable in the Sacramento area); *Barjon v.*
12 *Dalton*, 132 F.3d 496, 502 (9th Cir. 1997) (local forum rate was only appropriate where evidence
13 suggested availability of local counsel). Specifically, plaintiffs have shown that prior to bringing
14 this citizen enforcement action, they sought experienced local counsel specializing in Clean
15 Water Act citizen enforcement. Dckt. No. 79 at 7; Dckt. No. 84, Decl. of Allen Edwards, ¶¶ 5-9.
16 In doing so, plaintiffs contacted the Placer County District Attorney’s Office, the Sierra Business
17 Counsel, and several local environmental organizations, including two chapters of the Sierra
18 Club, California Sportfishing Protection Alliance, and Friends of the River. *Id.* ¶¶ 5-7. They
19 also sought representation from four attorneys in the Placer County/Nevada County area, and six
20 attorneys in the Sacramento area. *Id.* ¶¶ 8-9. However, all of the local counsel that plaintiffs
21 contacted lacked the experience and expertise to represent plaintiffs in this action, had conflicts
22 of interest that precluded representation, and/or were unwilling to take the case. *Id.* ¶¶ 8-10.
23 Because plaintiffs could not locate skilled local counsel – despite their considerable efforts –
24 they retained counsel in San Francisco with demonstrated experience successfully enforcing the
25 Clean Water Act on behalf of citizens. *Id.* ¶¶ 11-13.

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1 As such, the undersigned finds that San Francisco billing rates are appropriately applied
2 to the attorney hours incurred in this matter. *See Barjon*, 132 F.3d at 501-02 (stating that to
3 establish unavailability of local counsel, a plaintiff must demonstrate “unwillingness or inability
4 [to handle the case] due to lack of experience, expertise, or specialization”). Here, defendant has
5 not shown that the rates charged by plaintiffs’ counsel are unreasonable rates for attorneys in the
6 San Francisco area, or that the rates are inconsistent with the prevailing rates in that community.
7 Additionally, the undersigned notes that the extraordinary expertise and skill of plaintiffs’
8 attorneys ultimately played a large role in the resolution of this action. Accordingly, the
9 undersigned finds that plaintiffs’ attorneys’ hourly rates are reasonable and declines to adjust
10 those rates. Specifically, the undersigned finds that Daniel Cooper’s rate of \$550.00 per hour,
11 Martin McCarthy and Layne Friedrich’s rates of \$500.00 per hour, Samantha Williams and Drev
12 Hunt’s rates of \$350.00 per hour, and Liz Crosson’s rate of \$290.00 per hour are reasonable.¹⁰
13 Also, Daniel Mooney’s rate of \$375.00 per hour, which defendant concedes is a
14 reasonable rate for counsel in the Sacramento area, is reasonable.

15 Accordingly, the undersigned finds that plaintiffs are entitled to \$334,500.65 in
16 attorney’s fees.

17 II. Costs

18 Defendant argues that the costs plaintiffs seek are excessive and unreasonable, and asks
19 that certain “extraordinary costs” in an amount of at least \$3,450.78 be removed before any
20 fee/cost award is issued. Dckt. No. 78 at 5. Specifically, defendant contends that the following
21 costs are excessive: (1) plaintiffs’ claim for lunch at Il Fornaio on April 14, 2010 costing
22 \$126.57; (2) plaintiffs’ consultants’ claim for \$1,761.12 in unexplained travel expenses;¹¹ (3)

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24 ¹⁰ Additionally, the undersigned finds that Ashley Eagle-Gibbs, Caroline Koch, and
Meghan Strauss’s rates of \$100.00 per hour are reasonable.

25 ¹¹ In their response to defendant’s challenge to this cost, which was filed before the July
26 1 evidentiary hearing, plaintiffs stated that “the \$1,761.12 in travel costs incurred by Plaintiffs’
engineering consultant was for a plane ticket to attend the July 1 evidentiary hearing on

1 \$143.14 in unexplained “computer costs”; (4) undocumented claims for “Research Economist”
2 consultant costs after the April 14, 2010 hearing date; (5) unsubstantiated mileage, gasoline,
3 phone and copying charges; and (5) other meal costs, one including a nearly 40% tip. *Id.* at 13-
4 15 (citing the following “extraordinary” costs: Carpenter Environmental - \$1761.12 for travel
5 and \$139.34 for computer; \$350 for Michael Kavanaugh for April 19 & 20, 2010 phone calls;
6 phone costs of \$40.20; gas (\$52.60) and mileage costs (\$147.50 for 295 miles) on March 28,
7 2010, a day in which no hearing or other specific activity in the case occurred; grocery bill of
8 \$2.99; duplication and document production costs of \$174.40; \$3.80 for computer fees; \$133.30
9 for mileage; \$471.20 for duplication and document production; and \$47.76 for phone).

10 Additionally, in a supplemental brief, defendant challenges various consultant costs
11 billed by plaintiffs. Dckt. No. 101 at 10. Specifically, defendant objects to (1) a \$22,444 bill
12 from Carpenter Environmental Associates “for seven people to work on one 12-page declaration
13 signed by Bruce Bell”; (2) various bills from Carpenter Environmental Associates for computer
14 costs in June 2010; (3) a \$1,862.50 bill for consulting performed by Byron Shaw; and (4) a
15 \$1,575 bill for consulting performed by Michael Kavanaugh. *Id.* at 10-11.

16 Plaintiffs counter that all of the costs they seek are legitimate and were necessary for the
17 work performed in this matter. Dckt. No. 79 at 13-14 (and various supporting declarations).
18 Plaintiffs acknowledge, however, that the March 28, 2010 gas cost of \$52.60 should be deducted
19 from their cost total since mileage costs of \$147.50 for the same day are also included in their
20 request. *Id.* at 14.

21 The undersigned has carefully reviewed all of the costs sought by plaintiffs, including the
22 costs defendant contends are “extraordinary” and the explanations for those costs provided by

23 _____
24 injunctive relief – which is refundable should the hearing be canceled or continued.” Dckt. No.
25 79 at 14. Although the July 1 evidentiary hearing was ultimately vacated because of settlement
26 negotiations between the parties, it was not vacated until the day of the hearing. Therefore, the
undersigned presumes that the plane ticket was not refunded. If the ticket was refunded,
plaintiffs shall so indicate within the time prescribed for objecting to this order so that the cost
total can be modified accordingly.

1 plaintiffs, and finds that all of the costs sought by plaintiffs except for the March 28, 2010 gas
2 cost of \$52.60, as discussed above, were reasonably incurred in compelling defendant's
3 compliance with the Settlement Agreement. Therefore, \$52.60 will be deducted from plaintiffs'
4 non-expert cost total. Additionally, as noted above, because \$2064.36 of plaintiffs' requested
5 consultant fees were incurred pursuant to Paragraph 58, and since the \$15,000 cap set forth in
6 that paragraph has already been met, plaintiffs' consultant fee request will be reduced by
7 \$2064.36. Accordingly, plaintiffs are entitled to recover \$98,495.88 in costs (based on
8 \$89,137.32 in expert costs and \$9385.56 in other costs).

9 III. Installment Payment Period

10 Finally, defendant requests that the court authorize an installment payment period for the
11 payment of any fees and costs based on its "dire financial situation." Dckt. No. 78 at 15-17.
12 Specifically, defendant asks that the court "allow for payment over time; specifically, ten (10)
13 equal annual installments." *Id.* Defendant provided the court with a copy of a resolution that
14 was adopted by the Colfax City Council on May 12, 2010, declaring that an unreasonable
15 hardship would result unless defendant is permitted to pay any judgment entered by this court,
16 including one requiring the payment of plaintiffs' fees and costs, in installments of up to 10
17 years. Dckt. No 78 at 17; Dckt. No. 88, Cabral Decl., Ex. J.

18 Plaintiffs oppose defendant's request for a payment schedule, arguing that the payment
19 schedule is neither justified nor authorized. Dckt. No. 79 at 15-16. Specifically, plaintiffs
20 contend that defendant "provides no evidence of the claimed hardship, nor any other basis for the
21 requested ten-year schedule" and therefore fails to satisfy the standard under California
22 Government Code section 970.6. *Id.*

23 This court has discretion to order payment over time and to deny the prevailing party any
24 further compensation for delay in the payment of fees. *Barjon v. Dalton*, 132 F.3d at 503 (no
25 further compensation despite 17-month delay in payment). Additionally, under Federal Rule of
26 Civil Procedure 69, the procedure to execute a judgment must "accord with the procedure of the

1 state where the court is located.” Fed. R. Civ. P. 69(a)(1). California Government Code section
2 970.6 provides for a payment schedule for judgments not exceeding ten equal annual
3 installments if both:

4 (1) The governing body of the local public entity has adopted an ordinance or
5 resolution finding that an unreasonable hardship will result unless the judgment is
6 paid in installments [and]

7 (2) The court, after hearing, has found that payment of the judgment in
8 installments as ordered by the court is necessary to avoid an unreasonable
9 hardship.

10 Cal. Gov’t Code § 970.6(a). California Government Code section 970.6(b) further provides that
11 “[e]ach installment payment shall be of equal amount, consisting of a portion of the principal of
12 the judgment and the unpaid interest on the judgment to the date of the payment. The local
13 public entity, in its discretion, may prepay any one or more installments or any part of an
14 installment.” *Id.* at 970.6(b).

15 Here, as required by California Government Code section 970.6(a)(1), the Colfax City
16 Council adopted a resolution on May 12, 2010, declaring that an unreasonable hardship would
17 result unless defendant is permitted to pay any judgment entered by this court, including one
18 requiring the payment of plaintiffs’ fees and costs, in installments. Dckt. No. 88, Cabral Decl.,
19 Ex. J. Although the undersigned has not held a hearing regarding the payment of any attorney’s
20 fees and costs in installments, as required by California Government Code section 970.6(a)(2),
21 the issue was discussed with all parties on numerous occasions during the recent settlement
22 discussions in this case. Dckt. Nos. 104, 106, 108, 110. In light of those discussions, as well as
23 the multiple briefs in this action addressing the issue, the undersigned finds that the payment of
24 over \$400,000 in attorney’s fees and costs to plaintiffs, as provided herein, in installments is
25 necessary to avoid an unreasonable hardship to defendant and to help ensure the success of the
26 re-negotiated settlement agreement between the parties. Moreover, plaintiffs have not
demonstrated why this court should not exercise its discretion to order payment of plaintiffs’
significant amount of attorney’s fees over time, especially in light of the significant financial

1 obligations defendant has under the November 2, 2010 Order Re: Compliance with Settlement
2 Agreement, as well as the importance of those obligations. Therefore, the undersigned will
3 direct defendant to pay to plaintiffs the awarded attorney's fees and costs in four equal annual
4 installments in accordance with California Government Code section 970.6(b).

5 IV. Conclusion

6 For the reasons stated above, IT IS HEREBY ORDERED that:

7 1. Any objections to the figures calculated in this order shall be filed within seven days
8 of the date this order is filed. Responses to any such objections may be filed within seven days
9 of the date such objections are filed. If no objections are filed, this order will become final upon
10 the expiration of the seven day objection period.

11 2. Defendant shall pay to plaintiffs \$334,500.65 in attorney's fees, \$89,137.32 in expert
12 costs, and \$9,385.56 in other costs, along with interest, in four equal annual installments,
13 consisting of a portion of the principal of the judgment and the unpaid interest on the judgment
14 to the date of the payment. Defendant, in its discretion, may prepay any one or more
15 installments or any part of an installment.

16 3. The first installment shall be paid to plaintiffs within thirty days from the date this
17 order becomes final.

18 DATED: February 15, 2011.

19 
20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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