

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TAN LAM,

Plaintiff,

v.

CITY OF LOS BANOS, et al.,

Defendants.

No. 2:15-cv-00531-MCE-KJN

**MEMORANDUM AND ORDER**

Through this action Plaintiff Tan Lam (“Plaintiff”), as a successor-in-interest, sought redress from the City of Los Banos and Officer Jairo Acosta (hereafter “Officer Acosta” or “Defendant”) for the shooting death of his son, Sonny Lam (“Decedent”). This Court granted in part and denied in part Defendants’ Motion for Summary Judgment and the case proceeded to trial on Plaintiff’s remaining claims against Defendant. At the close of evidence, Defendant moved for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a), which Motion the Court denied. The jury thereafter returned a verdict in Plaintiff’s favor and awarded him \$2.75 million. Defendant then renewed his Motion for Judgment as a Matter of Law (“JMOL”) Pursuant to Rule 50(b) or, Alternatively, Motion for a New Trial, which was also denied. ECF Nos. 185, 197. Presently before the Court are Plaintiff’s Motion for Attorney Fees (ECF No. 204) and

1 Defendant's Motion to Correct Record on Appeal (ECF No. 213).<sup>1</sup> For the reasons set  
2 forth below, Plaintiff's Motion is GRANTED in part, and Defendant's Motion is  
3 GRANTED.<sup>2</sup>

### 4 5 ANALYSIS<sup>3</sup>

#### 6 7 A. Plaintiff's Motion for Fees and Costs

8 By way of Plaintiff's instant Motion, he seeks to recover pursuant to 42 U.S.C.  
9 § 1988 \$667,799 in fees, subject to a multiplier of 1.3. As the prevailing party, Plaintiff is  
10 entitled to recover his reasonable fees. See 42 U.S.C. § 1988(b).

11 "A reasonable fee is that which is 'sufficient to induce a capable attorney to  
12 undertake the representation of a meritorious civil rights case.'" K.M. ex rel. Bright v.  
13 Tustin Unified Sch. Dist., 78 F. Supp. 3d 1289, 1297 (C.D. Cal. 2015) (quoting Perdue v.  
14 Kenny A. ex rel. Winn, 559 U.S. 542, 552 (2010)). The court calculates the amount of  
15 attorney's fees by calculating a "lodestar" and "multiplying the number of hours  
16 reasonably spent on the litigation by a reasonable hourly rate." McCown v. City of  
17 Fontana Fire Dep't, 565 F.3d 1097, 1102 (9th Cir. 2009). The appropriate number of  
18 hours includes all time "reasonably expended in pursuit of the ultimate result achieved in  
19 the same manner that an attorney traditionally is compensated by a fee-paying client for  
20 all time reasonably expended on a matter." Hensley v. Eckerhart, 461 U.S. 424, 461  
21 (1983). However, in calculating the lodestar, "the district court should exclude hours  
22 'that are excessive, redundant, or otherwise unnecessary.'" McCown, 565 F.3d at 1102

23  
24 <sup>1</sup> Also pending before the Court is Plaintiff's Bill of Costs by which Plaintiff seeks to recover  
\$29,836 in expenditure. Defendant has not filed an opposition to that Bill, and the Clerk of the Court will  
be directed to tax the costs in full.

25  
26 <sup>2</sup> Because oral argument would not be of material assistance, the Court ordered this matter  
submitted on the briefs. E.D. Cal. Local Rule 230(g).

27  
28 <sup>3</sup> Given this Court's disproportionately high case load, and in the interest of conserving judicial  
resources and expediting a decision in this case, the Court will not recount details with which the parties  
are intimately familiar. To be clear, the Court has considered all evidence and arguments in the record,  
but it limits its written decision to only that which is necessary to resolve the parties' instant arguments.

1 (quoting Hensley, 461 U.S. at 434). Although district judges “need not, and indeed  
2 should not, become green-eyeshade accountants,” Fox v. Vice, 563 U.S. 826, 838  
3 (2011), the court should provide some indication of how it arrived at its conclusions, see  
4 Moreno v. City of Sacramento, 534 F.3d 1106, 1111 (9th Cir. 2008) (“When the district  
5 court makes its award, it must explain how it came up with the amount.”).

6 As a general rule, in determining the lodestar figure, “the court should defer to the  
7 winning lawyer's professional judgment as to how much time he was required to spend  
8 on the case.” Moreno, 534 F.3d at 1112. However, the party seeking an award of  
9 attorney's fees bears the burden of producing documentary evidence demonstrating “the  
10 number of hours spent, and how it determined the hourly rate(s) requested.” McCown,  
11 565 F.3d at 1102. Then the burden shifts to the opposing party to submit evidence  
12 “challenging the accuracy and reasonableness of the hours charged or the facts  
13 asserted by the prevailing party in its submitted affidavits.” Ruff v. County of Kings,  
14 700 F. Supp. 2d 1225, 1228 (E.D. Cal. 2010).

15 Because the lodestar figure is presumptively reasonable, “a multiplier may be  
16 used to adjust the lodestar amount upward or downward only in rare and exceptional  
17 cases, supported by both specific evidence on the record and detailed findings by the  
18 lower courts that the lodestar amount is unreasonably low or unreasonably high.” Van  
19 Gerwen v. Guarantee Mut. Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000) (citations  
20 omitted).

21 Defendant opposes Plaintiff's Motion on grounds that:

- 22 (1) the fee applicants did not meet their burden of producing  
23 evidence that their requested fees as-calculated are in line with  
24 the market rate for similar services by lawyers of comparable  
25 skill; (2) the applicants improperly use out-of-forum rates;  
(3) applicants' alternatively ask for forum rates unsupported by  
any evidence; (4) the lodestar is based on excessive,  
duplicative, unrelated, and administrative tasks.

26 Def.'s Opp., ECF No. 208, at 1.<sup>4</sup> The Court agrees that utilizing forum rates is

27 <sup>4</sup> To the extent Defendant challenges Plaintiff's Motion for seeking an unsupported \$1.7 million in  
28 fees, that argument is satisfactorily addressed by Plaintiff having filed a corrected motion indicating the  
total fees sought pre-multiplier is \$667,799.

1 appropriate, but it declines to reduce the billable hours claimed because Plaintiff has  
2 adequately explained the reasonableness of the time expended. Finally, the Court  
3 concludes that a 1.3 multiplier is appropriate.

4 “Generally, when determining a reasonable hourly rate, the relevant community is  
5 the forum in which the district court sits.” Prison Legal News v. Schwarzenegger,  
6 608 F.3d 446, 454 (9th Cir. 2010) (internal quotation marks omitted). The Court relies on  
7 rates from outside the local forum only if “local counsel was unavailable, either because  
8 they are unwilling or unable to perform because they lack the degree of experience,  
9 expertise, or specialization required to handle properly the case.” Barjon v. Dalton,  
10 132 F.3d 496, 500 (9th Cir.1997) (quoting Gates v. Deukmejian, 987 F.2d 1392, 1405  
11 (9th Cir.1992) (internal quotation marks omitted)). While Plaintiff provides evidence that  
12 he was unable to find counsel willing to take this case in Los Banos or the surrounding  
13 area, it does not appear from the record that he attempted to secure representation in  
14 Sacramento, where there are a number of counsel equipped to handle a case of this  
15 nature. Accordingly, the Court finds the application of Sacramento rates is appropriate.  
16 See Deocampo v. Potts, No. 2:06-cv-01283-WBS-CMK, 2014 WL 788429, \*8 (E.D. Cal.  
17 Feb. 25, 2014).

18 The parties of course next dispute what rates are reasonable in this district given  
19 Plaintiff’s counsels’ respective experience. Defendant asks the Court to follow  
20 Deocampo and award fees at a rate of \$400 per hour for John L. Burris, a sole proprietor  
21 employing the rest of Plaintiff’s attorneys, \$280 per hour for an attorney with more than  
22 ten years of experience,<sup>5</sup> and \$175 per hour for attorneys with 3-7 years of experience.  
23 Id. at \*10.

24 Plaintiff objects given that Deocampo is now five years old and market rates have  
25 presumably risen since it was issued. The Deocampo court revisited the issue in 2017,  
26 addressing a subsequent fee request and affirmed the appropriateness of a \$400 per

---

27 <sup>5</sup> The Court’s reading of Deocampo is that an attorney with approximately three decades of  
28 experience was awarded \$280 per hour, while attorneys with closer to ten years of experience were  
permitted to recover at a rate of \$250 per hour. Id.

1 hour rate for Mr. Burris, and a \$175 per hour rate for more junior attorneys, but increased  
 2 the rate for attorneys with more than ten years of experience, given that it was the same  
 3 attorneys who had previously appeared before it and they had several more years of  
 4 experience, to \$275 per hour. Deocampo v. Potts, 2017 WL 363142, \*4-5 (E.D. Cal.).  
 5 Although, as Plaintiff points out, attorneys have been awarded higher fees in some other  
 6 cases, the Court concludes that the foregoing rates, which were awarded to the same  
 7 firm that litigated this case, fall within the ranges described in those cases and remain  
 8 reasonable. See Z.F. by and through M.A.F. J.F. v. Ripon School District, No. 2:10-cv-  
 9 00523-TLN-CKD, 2017 WL 1064679 \*3 (E.D. Cal. Mar. 21, 2017) (collecting cases).  
 10 That said, because Defendant concedes \$280 per hour is appropriate for Adante Pointer  
 11 and Ayana Curry, the Court will utilize that rate for their work.

12 As for the reasonable hours expended, the Court finds all of Plaintiff's counsels'  
 13 work to be reasonable. Although this case presents as a straight-forward excessive  
 14 force action, the parties were required to litigate unique and novel issues with regard to  
 15 Defendant's fitness for duty, and Plaintiff's counsel faced an uphill battle given the  
 16 evidence that the Decedent had stabbed Defendant during the incident leading to his  
 17 death. The Court finds nothing unusual with regard to the billing entries or the use of  
 18 multiple attorneys to, for example, prepare for and take depositions. Accordingly, the  
 19 Court will calculate the lodestar as follows:

<b>Attorney</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
John L. Burris	0	\$400	0
Adante D. Pointer	526.4	\$280	\$147,392.00
Ayana Curry	105.5	\$280	\$29,540.00
Melissa Nold	639.66 <sup>6</sup>	\$175	\$111,940.50
	1271.56		<b>\$288,872.50</b>

27  
 28 <sup>6</sup> This reflects a three-hour reduction for hours Plaintiff concedes on Reply were inadvertently included due to a typo.

1 The Court also concludes, however, this this case presents a rare instance where  
2 a multiplier is appropriate. In making this finding, the Court has considered the following  
3 factors to the extent they were not included in the above lodestar calculation:

4 the novelty and difficulty of the issues involved in a case, the  
5 skill required to litigate those issues, the preclusion of other  
6 employment, the customary fee, relevant time constraints, the  
7 amount at stake and the results obtained, the experience,  
8 reputation, and ability of the attorneys, the nature and length  
9 of their professional relationship with the client, the  
10 “undesirability” of a case, and awards in similar suits

11 Davis v. City and County of San Francisco, 976 F.2d 1536, 1546 (9th Cir. 1992). Not  
12 only did Plaintiff have to litigate the novel issues discussed above with regard to  
13 Defendant’s mental health, but counsel demonstrated remarkable skill in obtaining the  
14 excellent results they did for their client. As Plaintiff points out, it appeared to the Court  
15 that defense counsel was confident a victory was inevitable for his client. Indeed, the  
16 Court too was skeptical that Plaintiff could overcome the evidence that Decedent had  
17 aggressively stabbed and continued to pursue Defendant prior to his death. These  
18 facts, along with the fact that Defendant was the only percipient witness to Decedent’s  
19 shooting, made taking this case incredibly “undesirable.” Against those odds, however,  
20 Plaintiff’s counsel succeeded in convincing a unanimous jury that in causing Decedent’s  
21 death Defendant used excessive force via conduct that was malicious, oppressive, or in  
22 reckless disregard of Decedent’s rights. Given these extraordinary results, the Court will  
23 apply a 1.3 multiplier. As such, Plaintiff’s counsel is hereby awarded \$375,534.30 in  
24 attorneys’ fees.

25 **B. Defendant’s Motion to Correct the Record on Appeal**

26 Defendant seeks to supplement the record on appeal by adding several  
27 transcripts containing testimony that were read to the jury in lieu of live testimony. The  
28 excerpts read in to the record of the deposition testimony of Mary Jimenez, Joseph  
Shuman, PhD, and Christopher Borchardt were not transcribed by the court reporter,  
filed with the Court, or provided to the jurors during deliberations. Given that the  
excerpts were before the jury for consideration, however, Plaintiff’s only opposition is


1 that the transcript provided for the Borchardt testimony is inaccurate. Given Plaintiff's  
2 position, he supplied his own version of the Borchardt transcript that Defendant  
3 concedes on reply is accurate. Accordingly, since it is undisputed that the forgoing  
4 transcripts read to the jury should be included for appellate consideration, Defendant's  
5 Motion is GRANTED, and the transcripts at ECF No. 213-1, Ex. A-B, p. 1-78, and ECF  
6 No. 213-2, shall be made part of the record on appeal.

7  
8 **CONCLUSION**

9  
10 Plaintiff's Motion for Attorney's Fees (ECF No. 204) is GRANTED in part, with the  
11 Court finding that Plaintiff is entitled to \$375,534.30 in attorneys' fees as set forth above.  
12 Defendant's Motion to Correct Record on Appeal (ECF No. 213) is also GRANTED. In  
13 addition, the Clerk of the Court is directed to tax costs in the amount of \$29,836.00 as  
14 set forth in Plaintiff's Bill of Costs (ECF No. 177).

15 IT IS SO ORDERED.

16 Dated: May 13, 2019

17  
18   
19 MORRISON C. ENGLAND, JR.  
20 UNITED STATES DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28