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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIA LAFEVER)
)
Plaintiff(s),)
)
v.)
)
ACOSTA, INC., a Delaware)
Closed Corporation, also)
d/b/a ACOSTA TRUEDEMAND,)
LLC; and also d/b/a ACOSTA)
MILITARY SALES, LLC; and)
DOES 1 through 20,)
inclusive,)
)
Defendant(s).)
_____)

No. C10-01782 BZ

**ORDER GRANTING ATTORNEYS'
FEES AND COSTS**

In this action, Plaintiff Maria Lafever ("Plaintiff")
sued her former employer, Defendant Acosta, Inc.
("Defendant") for violating several disability discrimination
provisions of the California Fair Employment and Housing Act
("FEHA") and for wrongfully terminating her. The case
settled the Friday before trial, and as part of the
settlement, Defendant agreed that Plaintiff's attorneys' fees
would be determined by a motion for attorneys' fees.
Plaintiff now moves the court for an award of \$973,680 in

1 attorneys' fees. Of this amount, \$831,360.00 is attributable
2 to work performed by attorney William Adams and his
3 paralegal, Julie Lundgren, and \$142,320.00 is attributable to
4 work performed by attorney Kirk Boyd.¹

5 "An award of attorneys' fees incurred in a suit based on
6 state substantive law is generally governed by state law."
7 Champion Produce, Inc. v. Ruby Robinson Co., 342 F.3d 1016,
8 1024 (9th Cir. 2003). Under the FEHA, courts have discretion
9 to award reasonable attorneys' fees to "the prevailing party,
10 . . . except where the action is filed by a public agency or
11 a public official, acting in an official capacity." Cal.
12 Gov. Code § 12965(b). To determine whether a fee award under
13 the FEHA is appropriate, California courts look to federal
14 decisions addressing such awards under Title VII. Chavez v.
15 City of L.A., 47 Cal. 4th 970, 985 (2010).

16 For the purposes of attorneys' fees, Plaintiff prevailed
17 in this action, and pursuant to the parties' settlement
18 agreement, Plaintiff is entitled to attorneys' fees. The
19 parties' dispute is over the amount.

20 To determine reasonable attorneys' fees, the court must
21 first calculate the lodestar by taking the number of hours
22 reasonably expended by the litigation and multiplying it by a
23 reasonable hourly rate. Fischer v. SJB-P.D. Inc., 214 F.3d
24 1115, 1119 (9th Cir. 2000) (citing Hensley v. Eckerhart, 461
25 U.S. 424, 433 (1983)). A reasonable rate is typically based

26
27 ¹ Plaintiff originally sought an additional 50 hours
28 for work performed by Mr. Boyd's summer law clerks. Plaintiff
has since eliminated those hours from her request. (See
Supplemental Declaration of Kirk Boyd, Docket No. 188, ¶ 6.)

1 upon the prevailing market rate in the community for "similar
2 work performed by attorneys of comparable skill, experience,
3 and reputation." Chalmers v. City of L.A., 796 F.2d 1205,
4 1210 (9th Cir. 1986); Davis v. City of S.F., 976 F.2d 1536,
5 1545-46 (9th Cir. 1992); see also Blum v. Stenson, 465 U.S.
6 886, 896 n.11 (1984) ("[T]he burden is on the fee applicant
7 to produce satisfactory evidence . . . that the requested
8 rates are in line with those prevailing in the community.").
9 To support a fee request, the prevailing party may submit
10 expert witness testimony regarding attorneys' fees and
11 declarations containing "verifiable information regarding
12 rates allowed by courts." Children's Hosp. & Med. Ctr. v.
13 Bonta, 97 Cal. App. 4th 740, 782-83 (2002).

14 **Reasonable Hourly Rate**

15 Defendant objects that the hourly rates of all of
16 Plaintiff's counsel exceed the average rates of California
17 litigators with similar experience. To ascertain an
18 attorneys' reasonable hourly rate, California courts consider
19 "the hourly prevailing rate for private attorneys in the
20 community conducting noncontingent litigation of the same
21 type." Ketchum v. Moses, 24 Cal. 4th 1122, 1133 (2001). In
22 "assessing a reasonable hourly rate, the trial court is
23 allowed to consider the attorney's skill as reflected in the
24 quality of the work, as well as the attorney's reputation and
25 status." MBNA America Bank, N.A. v. Gorman, 147 Cal. App.
26 4th Supp. 1, 13 (2006) (citing Ketchum, 24 Cal.4th at 1139
27 (2001)).
28

1 **William Adams**

2 Plaintiff requests \$700.00 as a reasonable hourly rate
3 for Mr. Adams. I find that Mr. Adams' requested hourly rate
4 warrants reduction because Plaintiff has failed to
5 demonstrate it is in line with prevailing rates for general
6 commercial or employment litigation in a case such as this,
7 one that involves only moderate complexity.

8 In support of her fee request, Plaintiff submits the
9 declaration of William M. Hensley, an attorney and
10 contributor to a website devoted to summarizing state and
11 federal decisions in California dealing with attorneys' fees
12 and hourly rates. Mr. Hensley opines that a \$700 hourly rate
13 for Mr. Adams is reasonable because even though it is on the
14 "higher end" of hourly rates charged by attorneys in San
15 Francisco law firms, it is commensurate with Mr. Adams' "high
16 experience level." (Declaration of William M. Hensley
17 ("Henlsey Decl.") ¶ 17.) Mr. Hensley relies almost
18 exclusively on Mr. Adams' years in practice to justify his
19 hourly rate. While Mr. Henlsey provides a list of attorneys'
20 hourly rates found to be reasonable by various courts in this
21 district, along with those attorneys' years of experience, he
22 does not indicate those attorneys' skills or reputation and
23 therefore fails to directly compare Mr. Adams to counsel of
24 similar skill, experience and reputation for whom a \$700
25 hourly rate is reasonable. Mr. Adams' declaration
26 demonstrates that he has 36 years of experience litigating
27 employment cases. Although he describes his hourly rate of
28 \$700 as "reasonable" for an attorney of his experience, he

1 fails to provide evidence that he has ever been awarded that
2 rate or that any client has actually paid that rate. See
3 Camarillo v. City of Maywood, Case No. 07-3469, 2011 U.S.
4 Dist. LEXIS 93695, at *7, 2011 WL 3665028 (C.D. Cal. Aug. 22,
5 2011) ("The actual rate that an attorney can command in the
6 market and customarily charges is itself highly relevant
7 proof of the prevailing community rate."); see also, Velez v.
8 Roche, Case No. 02-337, 2004 U.S. Dist. LEXIS 29848, at *25
9 (N.D. Cal. Sept. 22, 2004). And while Mr. Hensley's
10 declaration provides a great deal of information on the range
11 of hourly rates charged by attorneys with varying years of
12 experience, those hourly rates provide no information on the
13 background or experience levels of the attorneys, and tend
14 only to demonstrate that an attorney's number of years in
15 practice does not necessarily correlate with the appropriate
16 hourly rate for that attorney. (Hensley Decl. ¶ 20 (attorney
17 with thirty-three years of experience billed at \$775 per
18 hour, while attorney with twenty-six years was \$905.00 per
19 hour).) After reviewing recent fee awards in this district
20 for attorneys with similar levels of experience as Mr. Adams,
21 I find that a \$600.00 hourly rate is reasonable.² See, e.g.,

22
23 ² Moreover, when considering the appropriateness of
24 counsel's requested hourly rate, a court may take into account:
25 (1) the novelty and complexity of the issues; (2) the special
26 skill and experience of counsel; (3) the quality of
27 representation; and (4) the results obtained. Campbell v.
28 Nat'l Passenger R.R. Corp., 718 F. Supp. 2d 1093, 1098 (N.D.
Cal. 2010); Cabrales v. County of Los Angeles, 864 F.2d 1454,
1464 (9th Cir. 1988), *vacated on other grounds*. I am also
permitted to rely on my own knowledge of customary rates and my
experience concerning reasonable and proper fees. Ingram v.
Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011). In considering
each of these factors, I find that this matter did not involve

1 Hamed v. Macy's W. Stores, Case No. 10-2790, 2011 U.S. Dist.
2 LEXIS 125838, 2011 WL 5183856 (N.D. Cal. Oct. 31, 2011)
3 (awarding attorney with thirty-five years experience with
4 "extensive trial experience" and an "excellent reputation"
5 \$565 per hour in contested FEHA action); White v. Coblentz,
6 Patch, Duffy & Bass LLP Long Term Disability Ins. Plan, Case
7 No. 10-1855, 2011 U.S. Dist. LEXIS 125657 (N.D. Cal. Oct. 31,
8 2011) (awarding attorney with thirty-one years of litigation
9 experience \$600 per hour in contested ERISA action); Muniz v.
10 UPS, Case No. 09-1987, 2011 U.S. Dist. LEXIS 94364, 2011 WL
11 3740808 (N.D. Cal. Aug. 23, 2011) (awarding attorney with
12 forty years experience \$445 per hour in contested FEHA
13 action); Mitchel v. City of Santa Rosa, Case No. 09-5004,
14 2010 U.S. Dist. LEXIS 80596, 2010 WL 2740069, at *2 (N.D.
15 Cal. July 12, 2010) (awarding \$420.75 per hour for Bay Area
16 law firm partner with thirty-six years of experience in
17 defense-side employment law litigation); Campbell v. Nat'l
18 Passenger R.R. Corp., 718 F.Supp.2d 1093 (N.D. Cal. 2010)
19 (finding support for "a market rate from \$380 to \$775 per
20 hour for experienced employment and civil rights attorneys in
21 the Northern District [of California]" for the years
22 2006-2009); Freitag v. Cal. Dep't of Corr., Case No. 00-2278,
23 2008 U.S. Dist. LEXIS 119220 (N.D. Cal. Dec. 8, 2008)
24 (awarding \$525 and \$575 per hour for experienced civil rights

25
26 novel or particularly complex issues and that Mr. Adams'
27 performance throughout this litigation, discussed below, does
28 not merit the rate requested, particularly in light of my
knowledge of the prevailing rates in the community for
similarly experienced litigators. For this same reason, I find
no reason to apply a multiplier.

1 attorneys).³

2 **Julie Lundgren**

3 I find that the rate of \$175 per hour is reasonable for
4 Ms. Lundgren's paralegal time.⁴ Ms. Lundgren is a 1982
5 graduate of Boston University and is a certified paralegal
6 with over 25-years of experience. While Plaintiff fails to
7 provide any detail about the types of cases Ms. Lundgren
8 typically handles and what law firms she previously worked
9 for, the going rate for paralegal work in this district is
10 approximately \$150 per hour. See, e.g., Mitchel, 2010 U.S.
11 Dist. LEXIS 80596, 2010 WL 2740069, at *2 (awarding \$136.00
12 per hour for paralegal at Bay Area law firm who had ten years
13 of experience and a degree in paralegal studies); Campbell,
14 2010 U.S. Dist. LEXIS 20778, 2010 WL 625362, at *6-7
15 (awarding \$160 per hour for paralegal services in 2006-2009);
16 Faigman v. AT&T Mobility LLC, Case No. 06-4622, 2011 U.S.
17 Dist. LEXIS 15825, 2011 WL 672648 (N.D. Cal. Feb. 15, 2011)
18 (awarding \$150 for paralegal services); Muniz, 2011 U.S.
19 Dist. LEXIS 94364, at *29 (awarding \$130 per hour for
20 certified paralegal). Ms. Lundgren has significantly more
21 experience than the paralegals in the cases cited, and in
22 this case, she performed some work more akin to a junior
23 level associate. I therefore find that a \$175 hourly rate

24 ³ This rate also accounts for the fact that Mr. Adams'
25 office is located in Pleasanton, where the overhead is lower
26 than in San Francisco.

27 ⁴ There are inconsistencies in Plaintiff's motion
28 regarding what rate Plaintiff seeks for Ms. Lundgren's time.
(Compare Declaration of William Adams ("Adams Decl.") ¶ 10,
seeking \$250 per hour, with ¶ 13, seeking \$150 per hour.)

1 for her work is reasonable.

2 **Kirk Boyd**

3 Plaintiff requests \$600.00 as a reasonable hourly rate
4 for Mr. Boyd. In support of this fee award, Plaintiff
5 submits Mr. Boyd's declaration which sets forth his
6 educational and professional background. Mr. Boyd also
7 states that he is aware that other attorneys with his same
8 degree of education, training and skill have hourly rates of
9 \$700 or higher. (Declaration of Kirk Boyd ("Boyd Decl.") ¶
10 11.) Like Mr. Adams, Mr. Boyd fails to provide the court
11 with any evidence of prior fee awards regarding his hourly
12 rate and fails to state that any client has paid him \$600 per
13 hour. Instead, Mr. Boyd submitted a declaration by Eric
14 Grover, a partner with the law firm of Keller Grover LLP,
15 located in San Francisco, who states that he spends
16 approximately 95% of his time representing plaintiffs in
17 employment matters and that he has a similar background to
18 Mr. Boyd (e.g., both graduated law school within three years
19 of each other and were trained at large law firms before
20 forming their own firms). Mr. Grover's declaration further
21 states that his present billing rate is \$650 per hour and
22 that he was recently awarded fees based on that rate.

23 Mr. Boyd was brought into this case for the specific
24 purpose of assisting Mr. Adams with the trial. Mr. Boyd's
25 billing entries begin on June 24, 2011, three days before the
26 pre-trial conference. As noted during the hearing, I find it
27 reasonable that Mr. Adams brought in another attorney to
28 assist him with the anticipated trial in this case,

1 particularly given the fact that Defendant had at least two
2 (and possibly three) attorneys assisting it with its defense.
3 While it may not have been necessary for Mr. Adams to bring
4 in an attorney with Mr. Boyd's 25 years of experience, the
5 Ninth Circuit has cautioned district courts not to second-
6 guess staffing decisions. Moreno v. City of Sacramento, 534
7 F.3d 1106, 1115 (9th Cir. Cal. 2008). Nevertheless, I do not
8 think that Mr. Boyd's requested rate is reasonable. I have
9 reviewed prior fee awards pertaining to Mr. Boyd in this
10 district, and in light of these fee awards and Mr. Boyd's
11 background, experience and the level of complexity of this
12 case, I find that a \$575 hourly rate is reasonable. Bobol v.
13 HP Pavilion Mgmt., Case No. 04-00082, 2006 U.S. Dist. LEXIS
14 21125, 2006 WL 927332 (N.D. Cal. Apr. 10, 2006) (awarding Mr.
15 Boyd \$350 per hour for work performed between 2004-2006);
16 Hamed, 2011 U.S. Dist. LEXIS 125838 (awarding experienced
17 litigation attorney with 35 years of practice \$565 per hour
18 in contested FEHA action).

19 **Reasonable Number of Hours**

20 The court has discretion to determine the number of
21 hours reasonably expended on this case. Chalmers, 796 F.2d
22 at 1211; Hensley, 461 U.S. at 437 (noting that a district
23 court has discretion in determining the amount of a fee
24 award, which is "appropriate in view of the district court's
25 superior understanding of the litigation and the desirability
26 of avoiding frequent appellate review of what essentially are
27 factual matters"). The court may, in its discretion, reduce
28 hours "where documentation of the hours is inadequate; if the

1 case was overstaffed and hours are duplicated; [or] if the
2 hours expended are deemed excessive or otherwise
3 unnecessary." Chalmers, 796 F.2d at 1210. When awarding
4 attorney fees, the prevailing party may only be compensated
5 for those hours of work that were "reasonably expended." See
6 L.H. v. Schwarzenegger, 645 F. Supp. 2d 888, 896 (E.D. Cal.
7 2009) (quoting Hensley, 461 U.S. at 433-34)). The fee
8 applicant bears the burden of "documenting the appropriate
9 hours expended" in the litigation and therefore must "submit
10 evidence supporting the hours worked." Hensley, 461 U.S. at
11 433, 437.

12 Moreover, in cases where a voluminous fee application is
13 filed, in exercising its billing judgment the district court
14 "is not required to set forth an hour-by-hour analysis of the
15 fee request." Gates v. Deukmejian, 987 F.2d 1392, 1399 (9th
16 Cir. 1992) (citing Jacobs v. Mancuso, 825 F.2d 559, 562 (1st
17 Cir. 1987)). "[W]hen faced with a massive fee application
18 the district court has the authority to make across-the-board
19 percentage cuts either in the number of hours claimed or in
20 the final lodestar figure 'as a practical means of trimming
21 the fat from a fee application.'" Id. at 1399 (quoting New
22 York State Ass'n for Retarded Children v. Carey, 711 F.2d
23 1136, 1146 (2d Cir. 1983)). Having analyzed Plaintiff's
24 counsels' records, I find that an across-the-board percentage
25 reduction in hours is necessary.

26 To begin, it is worth reiterating that this was a fairly
27 routine, single-plaintiff case under FEHA that did not
28 proceed through trial. The legal disputes were not novel;

1 nor were the policy implications of the lawsuit. Thus, as I
2 stated at the hearing, given the circumstances, it is
3 somewhat troubling that the Plaintiff's fees in this case
4 have somehow reached the near million dollar mark. Cf Hamed
5 v. Macy's W. Stores, Case No. 10-2790, 2011 U.S. Dist. LEXIS
6 125838 (N.D. Cal. Oct. 31, 2011) (awarding \$463,401 in
7 attorneys fees in a contested FEHA action that proceeded
8 through trial).⁵ This is particularly true given that there
9 was little discovery motion practice, and only one round of
10 summary judgment briefing.⁶

11 After reviewing the time records submitted by Mr. Adams,
12 I find that an across the board reduction in the requested
13 hours is warranted in light of 1) the general level of
14 disorganization and inefficiency I witnessed throughout the
15 course of the litigation on the part of Mr. Adams; and 2) the

16
17 ⁵ The only remotely similar employment case involving a
18 million dollar fee to which Plaintiff could point is Wysinger
19 v. Automobile Club of Southern California, 157 Cal. App. 4th
20 413 (2007). Wysinger affirmed a trial court award of
21 \$978,791.00 in attorneys' fees after the plaintiff had obtained
22 a jury verdict of \$1.284 million, which the trial court
23 characterized as an excellent result, and for which it awarded
24 a 1.1 multiplier. Apart from being factually distinguishable
25 on many grounds, the issue in Wysinger was whether the trial
26 court erred in not reducing the fee award because the plaintiff
27 had not prevailed on every claim. The Court of Appeal affirmed
28 without any discussion about the reasonableness of the award,
which does not otherwise appear to have been challenged.

24 ⁶ Plaintiff makes much of the fact that Defendant
25 failed to submit a separate statement of facts to accompany its
26 motion for summary judgment, arguing that this failure somehow
27 resulted in the necessity of revising and resubmitting a new
28 opposition brief. I find this argument unpersuasive,
particularly in light of the fact that, as pointed out by
Defendant during the hearing, its moving papers were
substantively unaltered when it re-filed its motion to
incorporate a separate statement, thereby not necessitating any
substantive edits to Plaintiff's opposition.

1 excessiveness of some of Mr. Adams' billing entries. With
2 respect to the first issue of inefficiency, Mr. Adams often
3 engaged in untimely filings and filed "corrected" versions of
4 various motions to account for this untimeliness. (See,
5 e.g., Docket Nos. 67, 164.) There is also evidence in the
6 record that Mr. Adams was not diligent in responding to
7 defense counsel's telephone calls or telephone calls from the
8 court, and that Plaintiff's counsel failed to comply with
9 various court orders, which further supports my overall
10 impression of Mr. Adams' disorganization. (See Docket Nos.
11 146, 147, 157.)

12 Defendant also complains of the general level of
13 excessive time Plaintiff's counsel recorded for various
14 tasks, such as the nearly 200 hours that Plaintiff's counsel
15 spent opposing Defendant's summary judgment motion (in
16 addition to the 37 hours Plaintiff's counsel spent filing a
17 "corrected" opposition), and the nearly 343 hours spent on
18 legal and factual research.⁷ While Defendant offers no
19 authority or evidence to suggest that these hours are
20 excessive (for example, the Ninth Circuit has suggested that,
21 to demonstrate the excessiveness of hours requested, an
22 opposing party could present evidence of how long its
23 attorneys spent doing the same task, Democratic Party of
24 Wash. v. Reed, 388 F.3d 1281, 1287 (9th Cir. 2004)), I

25
26 ⁷ The fact that Mr. Adams, who professes to be an
27 experienced FEHA attorney, spent this much time on legal
28 research in a case such as this, which did not involve any
novel or particularly complex issues, somewhat belies his
assertions that he should be paid an hourly rate of \$700.

1 nevertheless find that Mr. Adams' time should be reduced
2 based on the general level of inefficiency that I witnessed
3 throughout the course of the litigation of this case- some of
4 which is demonstrated in the billing records themselves.
5 Stonebrae, L.P. v. Toll Bros., 2011 U.S. Dist. LEXIS 39832,
6 2011 WL 1334444 (N.D. Cal. Apr. 7, 2011) (applying a 5%
7 reduction in hours billed due to inefficiency); see also
8 Ferland v. Conrad Credit Corp., 244 F.3d 1145, 1149 (9th Cir.
9 2001) (across-the-board percentage reduction acceptable when
10 accompanied by "clear and concise explanation"). For
11 example, as I pointed out during the hearing, on February 25,
12 2011, Mr. Adams charged 2 hours preparing for a telephonic
13 discovery conference with the Court that lasted for a total
14 of 8 minutes, and did not involve any novel or complex legal
15 issues. On March 3, 2011, Mr. Adams billed 2 hours for
16 "noticing" that no separate statement of facts was filed with
17 Defendant's motion for summary judgment, and "researching" my
18 standing orders on the need for a separate statement.

19 More troubling, despite representing to the court that
20 he is an experienced litigator with many matters and clients,
21 Mr. Adams routinely billed numbers of hours to this single
22 case which strain credibility. For example, on June 16,
23 2011, Mr. Adams billed 14.5 hours; on June 27, 2011, Mr.
24 Adams billed 20.3 hours; on July 1, 2011, Mr. Adams billed
25 15.8 hours; and on July 5, 2011, Mr. Adams billed exactly 24
26 hours to this case, only to turn around on July 6, 2011 and
27 bill another 21.4 hours. These are just some examples of the
28 days in which Mr. Adams billed an alarming number of hours to

1 this case alone, which is especially troubling given that in
2 June and July, he had brought Mr. Boyd in to assist with the
3 matter, and that one of the reasons the Court was given when
4 it was difficult to reach him, or he was late in meeting a
5 deadline, was that he was a sole practitioner who had to deal
6 with other matters. During the hearing, Mr. Adams could
7 provide no satisfactory explanation for such entries.

8 For these reasons, I find that Mr. Adams' time must be
9 reduced, and I exercise my discretion to reduce Mr. Adams'
10 hours by 40%, for a total of 659.30 hours.

11 With respect to Mr. Boyd, I also find that his hours are
12 subject to reduction. Mr. Boyd's billing records are
13 organized in such a way that it is impossible to evaluate
14 them to exclude "hours that are excessive, redundant, or
15 otherwise unnecessary[.]" Hensley, 461 U.S. at 437. Mr.
16 Boyd engages in the practice of "block billing." "Block
17 billing" refers to "the time-keeping method by which each
18 lawyer and legal assistant enters the total daily time spent
19 working on a case, rather than itemizing the time expended on
20 specific tasks." Mendez v. County of San Bernardino, 540
21 F.3d 1109, 1129 n.2 (9th Cir. 2008) (quoting Welch, 480 F.3d
22 at 945 n.2). Where courts are unable to properly analyze
23 billing records to determine whether there is excessive or
24 unnecessary billing – as with block billing – legitimate
25 grounds exist to reduce or eliminate claimed hours. See
26 Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th Cir.
27 2009). This is so because it is "more difficult to determine
28 how much time was spent on particular activities." Id. In

1 circumstances like these, either line by line or
2 across-the-board percentage cuts are within the discretion of
3 the district court to reduce a fee award. Welch, 480 F.3d at
4 948-49 (reducing total billable hours by 20% across-the-board
5 for billing in 15 minute intervals which the court found too
6 imprecise to accurately reflect time expended and citing the
7 California State Bar's Fee Report, which concluded that block
8 billing may increase time by 10% to 30%); Lahiri v. Universal
9 Music & Video Distrib. Corp., 606 F.3d 1216, 1222-23 (9th
10 Cir. 2010) (finding permissible district court's
11 identification of attorneys and paralegals who were primarily
12 responsible for block billing, and reducing 80% of their
13 billable hours by 30%); see also, Cal. Alliance of Child &
14 Family Servs. v. Wagner, Case No. 09-4398, 2011 U.S. Dist.
15 LEXIS 76730, 2011 WL 2837423 (N.D. Cal. July 15, 2011)
16 (reducing hours listed in block billed entries by 20%).
17 Block billing is pervasive throughout Mr. Boyd's time
18 records, and as a result, it is impossible to decipher how
19 much time was spent on individual tasks and whether the time
20 spent was reasonable.⁸ This is of special concern in this
21 case because Mr. Boyd was brought into this case in order to

22
23 ⁸ For example, in Mr. Boyd's time records, on 6/27/11,
24 there is an entry for 11.40 hours for "Preparation of trial
25 binder; preparation for and attend the pretrial conference with
26 Judge; preparation of voir dire." (Docket No. 171 p. 10.)
27 This entry is troubling for a variety of reasons. First, Mr.
28 Boyd fails to itemized how much of the 11.40 hours was
designated to each task, which makes it impossible for the
court to determine whether Mr. Boyd spent 5 hours or 30 minutes
"preparing" a trial binder, which may be a clerical task.
Second, the voir dire questions had already been prepared, and
were distributed at the conference, which makes the
reasonableness of this entry suspect.

1 assist with trial, and as pointed out during the hearing, his
2 time entries- particularly for June 2011- seem duplicative in
3 light of work already performed by Mr. Adams. For example,
4 on June 25, 2011, Mr. Boyd bills time to "legal research
5 regarding disability discrimination." This entry is not only
6 vague, but it is also generic and presumably covers legal
7 research already done by Mr. Adams.⁹ Likewise, on June 27,
8 2011, Mr. Boyd bills time to "legal research re reasonable
9 accommodation for jury instructions." Yet the pretrial
10 conference in this case occurred on June 27, and it is my
11 practice to require the parties to submit proposed jury
12 instructions prior to the conference, which means that Mr.
13 Adams would have already researched the jury instructions
14 submitted by Plaintiff.¹⁰ Given this duplication of effort, I
15 exercise discretion to reduce the hours listed in Mr. Boyd's
16 billed entries by 20%. Welch, 480 F.3d at 948; see also,
17 Miller ex rel. NLRB v. Hotel & Rest. Emples. & Bartenders
18 Union, Local 2, 107 F.R.D. 231, 245 (N.D. Cal. 1985)
19 (applying a 40% reduction to vague billing entries). This
20 twenty percent reduction will account for any duplicative

22 ⁹ When questioned about the possibility that some of
23 the legal research was duplicative, Mr. Boyd responded that in
24 an effort to be efficient, he had some law student clerks
25 perform some of the research, and they found some relevant case
26 law which neither he nor Mr. Adams had. While Mr. Boyd made
27 much of his decision not to bill for the law students, see fn.1
28 supra, it is troubling that thousands of dollars were billed
for legal research by the highly experienced Messrs. Adams and
Boyd, which was better done by law students.

¹⁰ Additional time for researching jury instructions is
also billed on June 28, July 1, July 2, July 5, July 6, July 8,
and July 11.

1 entries, such as research conducted by both Mr. Adams and Mr.
2 Boyd during the two month trial preparation period, and work
3 performed by Mr. Boyd "reviewing" case pleadings and other
4 documents in order to get up to speed on the case.
5 Defenbaugh v. JBC & Assocs., Case No. 03-651, 2004 U.S. Dist.
6 LEXIS 16256, 2004 WL 1874978, at *27 (N.D. Cal. Aug. 10,
7 2004) (reducing hours for time spent bringing attorney up-to-
8 date on case developments as duplicative).

9 Thus, while the majority of hours billed by Mr. Boyd
10 appear reasonable, the aforementioned issues make it
11 unreasonable for the court to award the full amount
12 requested. Accordingly, the court applies an
13 across-the-board reduction of twenty percent to the hours
14 billed by Mr. Boyd and across-the-board reduction of forty
15 percent to the hours billed by Mr. Adams. The resulting
16 award is \$548,243.00 (659.28 hours x \$600 per hour for worked
17 performed by Mr. Adams; 248.8 hours x \$175 per hour for
18 worked performed by Ms. Lundgren; 189.80 hours x \$575 per
19 hour for work performed by Mr. Boyd), which represents
20 attorneys' fees for the reasonable hours expended pursuing
21 this litigation.

22 **Costs**

23 Plaintiff seeks costs in the amount of \$18,815.16.
24 These costs include messenger and service costs, filing fees,
25 court reporter costs and transcript fees, witness fees,
26 document retrieval fees, copy charges, and costs associated
27 with the depositions of two witnesses whose depositions were
28 taken by attorney Henry Josefsberg. (Adams Decl., ¶4, Ex. A.)

1 Plaintiff provided itemized billing statements which include
2 all of the aforementioned costs. (Id.) I find these costs
3 reasonable and award them to Plaintiff.

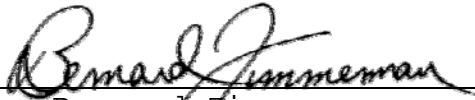
4 Plaintiff also seeks \$17,948.09 in costs for work
5 performed by Alvarado Smith for consulting and expert witness
6 services "to prepare declarations and perform other work in
7 support of the motion for an award of attorneys fees and
8 costs." (Pl.'s Reply Brief p. 5.) It appears that the
9 majority of this sum is attributable to the declaration
10 submitted by William H. Hensley in support of Plaintiff's
11 request for fees. The court found the declaration prepared
12 by Mr. Hensley to be of little use. Mr. Hensley's
13 declaration does not cite to or rely upon the fee awards
14 referenced in this order and does not include any examples of
15 prior fee awards involving the attorneys in this case (such
16 as Mr. Boyd' prior fee award). Mr. Hensley also relies a
17 great deal on a declaration submitted by another expert in a
18 different cases, incorporating it by reference. The rest of
19 Alvarado Smith's fee is attributable to hours billed by an
20 unknown person identified as "MDA" who charged \$450 per hour
21 to draft largely boilerplate objections to Defendant's expert
22 witness declaration.¹¹ Given these deficiencies, I find it
23 unreasonable to award Plaintiff the \$17,948.09 in additional
24 costs sought in her reply submissions.

25
26 ¹¹ The parties also submitted a number of objections to
27 each side's respective expert witness declarations. These
28 objections are overruled in their entirety, as most go to the
weight of the evidence, not to admissibility. In any event,
the court found the declarations of limited use and therefore
assigned little value to the statements made therein.

1 For the reasons stated above, **IT IS ORDERED** that
2 Plaintiff is awarded \$567,058.16 in fees and costs as
3 follows:

ATTORNEY/PARALEGAL	HOURLY RATE	HOURS	FEE AWARD
William Adams	\$600	659.28	\$395,568.00
Julie Lundgren	\$175	248.80	\$43,540.00
Kirk Boyd	\$575	189.80	\$109,135.00
Total Fees			\$548,243.00
COSTS			\$18,815.16
TOTAL AWARD			\$567,058.16

11 Dated: November 8, 2011

12 
13 Bernard Zimmerman
14 United States Magistrate Judge