

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
NORTHERN DISTRICT OF CALIFORNIA

LISA NOTTER,
Plaintiff,
v.
CITY OF PLEASANT HILL, et al.,
Defendants.

Case No.16-cv-04412-JSC

ORDER RE: PLAINTIFF’S MOTION FOR ATTORNEY’S FEES

Re: Dkt. No. 86

United States District Court
Northern District of California

Plaintiff Lisa Notter brought this civil action alleging violation of her civil rights in connection with her arrest at her home following a noise complaint regarding the music at her daughter’s wedding reception. The parties reached a confidential settlement shortly before trial resolving all of the claims with the exception of attorney’s fees and costs. Plaintiff’s motion for attorney’s fees and costs is now pending before the Court. (Dkt. No. 86.) After carefully considering the arguments and briefing submitted, the Court concludes that oral argument is unnecessary, see Civ. L.R. 7-1(b), and GRANTS IN PART AND DENIES IN PART Plaintiff’s motion for attorney’s fees and costs.

BACKGROUND

A. Factual Background

Plaintiff Lisa Notter hosted her daughter’s wedding reception at her home in Pleasant Hill, California on August 8, 2015. (Dkt. No. 65-2, Notter Decl. ¶ 2.) In advance of the reception, she contacted the Pleasant Hill Police Department to inquire whether there were any noise restrictions in place and whether there was anything she should do in advance. (Id.) The officer she spoke with advised her that “there were none per se, but that the music should be turned down by midnight.” (Id. (emphasis in original).) The officer recommended that she distribute a flyer to her neighbors,

1 which she did. (Id.)

2 At approximately 10:20 p.m. on the night of the wedding, the Pleasant Hill Police
3 Department received a noise complaint and Officers Chelsea Wright and Sean Bias were
4 dispatched to Plaintiff's residence at 11:15 p.m.¹ (Dkt. No. 61-1.) Officer Wright arrived first and
5 noticed several young men working as valets outside the residence. (Dkt. No. 65-1 at 74:17-
6 75:24.) The parties' version of events thereafter diverges with Officer Wright testifying that one
7 of the valets invited her to follow him into the house to find the homeowner, and that same valet
8 disputing that he invited her to follow him and testifying instead that he offered to bring the
9 homeowner to her. (Compare Dkt. No. 65-1 at 12, Wright Depo. at 125:1-7; 132:6-16 with Dkt.
10 No. 65-1, Deluca Depo. at 8:17-23.²) In any event, Officer Wright entered the residence and
11 proceeded to the backyard where she engaged in a discussion with Plaintiff Lisa Notter regarding
12 the music. (Dkt. No. 65-2, Notter Decl. at ¶¶ 5-7; Dkt. No. 61-2, Wright Depo. at 85:11-88:2.)
13 During the course of the exchange, Officer Wright and Ms. Notter exchanged words and at some
14 point Plaintiff turned and water in a cup that she was holding either intentionally or accidentally
15 ended up on Officer Wright's shoulder. (Id.) By this point Officer Bias arrived on scene and
16 Officer Wright put Plaintiff's hands behind her back and with Officer Bias's assistance escorted
17 Plaintiff to a side yard and placed her under arrest. (Dkt. No. 65-1 at 36, Bias Depo at 21:25;
18 158:16-160:21.) Ms. Notter was very upset and uttered profanity at the officers who she alleges
19 used excessive force in the arrest and when they subsequently escorted her to a police vehicle to
20 be taken to the station. (Dkt. No. 65-2 at ¶¶ 9-10.)

21 Ms. Notter was then taken to the Pleasant Hill Police Station where according to an
22 undisputed audio transcription Plaintiff was advised of her rights and told that she would be
23 allowed to go home if she would be cooperative and reasonable. (Dkt. No. 65-1 at 90-106.)
24 Although the audio does not reflect any further profanity or resistance on Plaintiff's part, shortly
25

26 ¹ Officer Wright has since married and changed her surname to Ortega, and has been promoted to
27 Detective. For purposes of clarity, the Court nonetheless refers to her as Officer Wright—her
28 name and title at the time of the incident—throughout.

² Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the
ECF-generated page numbers at the top of the documents.

1 thereafter Sergeant Priebe, the sergeant in charge, told her that she was going to the jail for
2 booking because “[y]ou’re functionally cooperating but the attitude test has not been passed.”
3 (Id.) Plaintiff then spent the night in jail. She alleges that following the incident with Officers
4 Wright and Bias, she had bruising on her wrists, arms, and torso, as well as a fracture on her heel.
5 (Dkt. No. 65-1 at 117, Notter Depo. at 194:3-197:18; 209:16-23.)

6 **B. Procedural Background**

7 A year after the incident, Plaintiff filed this civil action against the City of Pleasant Hill,
8 the Pleasant Hill Police Department, and Officer Chelsea Wright. (Dkt. No. 1.) Plaintiff pled 14
9 claims for relief including claims under 42 U.S.C. § 1983 and state law. Defendants moved to
10 dismiss for failure to state a claim and the Court granted the motion in part and denied it in part.
11 (Dkt. Nos. 8 & 22.) Plaintiff thereafter filed her First Amended Complaint, again pleading 14
12 claims for relief under state and federal law, against Defendants the City of Pleasant Hill, Officer
13 Wright, Officer Bias, and Sergeant Priebe. (Dkt. No. 27.) Plaintiff thereafter voluntarily
14 dismissed her 13th claim for defamation and all claims as to Sergeant Priebe. (Dkt. No. 35.)

15 Plaintiff then moved for partial summary judgment on her claim that Officer Wright’s
16 warrantless entry into her home violated her Fourth and Fourteenth Amendment rights and
17 Defendants moved for summary judgment on all of Plaintiff’s claims. (Dkt. Nos. 56 & 60.) The
18 Court denied both motions for summary judgment given the multiple factual disputes, noting that
19 Plaintiff’s motion regarding the warrantless entry claim presented a close question, but that the
20 Court could not conclude as a matter of law that there were no set of provable facts which would
21 entitle Officer Wright to at least qualified immunity. (Dkt. No. 72.)

22 A week after this ruling, the parties met with Magistrate Judge Salle Kim for the first of
23 many settlement conferences. Although the case did not settle at that first settlement conference,
24 it did settle on July 27, 2017 a week before trial was to commence. (Dkt. No. 77.) The parties
25 placed the terms of the confidential settlement agreement on the record and executed a written
26 settlement agreement on July 30, 2017. (Dkt. No. 87-1.) Among the other terms, the parties
27 agreed that Plaintiff was the prevailing party for purposes of awarding attorneys’ fees. This
28 motion for attorney’s fees followed.

1 **LEGAL STANDARD**

2 “[A] court assessing attorney[’]s fees begins with a touchstone or lodestar figure, based on
3 the careful compilation of the time spent and reasonable hourly compensation of each attorney ...
4 involved in the presentation of the case.” Ketchum v. Moses, 24 Cal.4th 1122, 1131-32 (2001)
5 (internal quotation marks omitted); see also Morales v. City of San Rafael, 96 F.3d 359, 363 (9th
6 Cir. 1996) (“The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
7 reasonably expended on the litigation by a reasonable hourly rate.”).

8 Where, as here, a plaintiff has prevailed on both state and federal claims the court applies
9 state law for attorney’s fees to state claims and federal common law of attorney’s fees to the
10 federal claims. See Klein v. City of Laguna Beach, 810 F.3d 693, 701 (9th Cir. 2016). Federal
11 and California law regarding attorney’s fees are coexistent except that under California law, a
12 prevailing Plaintiff may be entitled to lodestar enhancement or multiplier. “Thus, [o]nce the court
13 has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative
14 ‘multiplier’ to take into account a variety of other factors, including the quality of representation,
15 the novelty and complexity of the issues, the results obtained, and the contingent risk presented.”
16 Thayer v. Wells Fargo Bank, N.A., 92 Cal. App. 4th 819, 833 (2001) (internal citation omitted).

17 **DISCUSSION**

18 Plaintiff seeks \$541,712.62 in fees and \$11,444.07 in costs. This amount is based on
19 \$286,195 in fees for Matthew Witteman, \$61,964.25 in fees for Panos Lagos and \$10,325 in fees
20 for Mr. Lagos’s paralegal Alicia Hubbs, multiplied by a lodestar enhancement of 1.5. Defendants
21 have three primary objections to the fee award: (1) certain billing entries are unreasonable and
22 should be excluded; (2) Plaintiffs should not recover fees on fees; and (3) a multiplier is not
23 appropriate. Defendants maintain that a reasonable attorney’s fees award here is \$206,994.86.

24 **A. Reasonable Hourly Rate**

25 “In determining the reasonable hourly rate, the district court should be guided by the rate
26 prevailing in the community for similar work performed by attorneys of comparable skill,
27 experience, and reputation.” Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210-11 (9th Cir.
28 1986), amended on other grounds by 808 F.2d 1373 (9th Cir. 1987); see also Graham v.

1 DaimlerChrysler Corp., 34 Cal.4th 553, 579 (2004). The relevant community for the purposes of
2 determining the prevailing market rate is generally the “forum in which the district court sits.”
3 Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008) (internal citation omitted).
4 “The fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits
5 of its counsel, that the requested rates are in line with those prevailing in the community for
6 similar services of lawyers of reasonably comparable skill and reputation.” Jordan v. Multnomah
7 Cty., 815 F.2d 1258, 1263 (9th Cir. 1987); see also Civil Local Rule 54–5(b)(3) (requiring the
8 party seeking a fee award to submit “[a] brief description of relevant qualifications and experience
9 and a statement of the customary hourly charges of each such person or of comparable prevailing
10 hourly rates or other indication of value of the services.”).

11 Plaintiff seeks \$650/hour for Mr. Witteman, \$750/hour for Mr. Lagos, and \$250/hour for
12 paralegal Alicia Hubbs. (Dkt. Nos. 86-2 ¶ 6; 86-3 at ¶ 15.) In support of these hourly rates,
13 Plaintiff submitted declarations from Mr. Witteman and Mr. Lagos discussing their qualifications
14 and those of Ms. Hubbs. (Dkt. Nos. 86-2; 86-3.) Mr. Witteman is a 1989 law graduate and Mr.
15 Lagos is a 1974 law graduate. (Dkt. Nos. 86-2 at ¶ 7; 86-3 at ¶ 2.) Plaintiff also provided
16 declarations from outside attorneys Richard Pearl and Chandler Visher attesting to the
17 reasonableness of the hourly rates sought. (Dkt. No. 86-4; 86-5.) Mr. Visher is a consumer class
18 action attorney who has co-counseled with Mr. Witteman. (Dkt. No. 86-4 at ¶ 3.) He attests that
19 Mr. Witteman’s hourly rate of \$650 is reasonable in light of his experience and that Mr.
20 Witteman’s 2010 hourly rate of \$500 was approved by the court in Collins v. City of Los Angeles,
21 BC 330749 and that in 2015 he retained Mr. Witteman to assist him in a matter and paid him an
22 hourly rate of \$600. (Dkt. No. 86-4 at ¶¶ 3-4.)

23 Mr. Pearl, an attorney who specializes in issues related to court-awarded attorney’s fees,
24 sets forth the non-contingent market rates charged by attorneys in California and approved by
25 courts in this District and by other California courts over the last few years. (Dkt. No. 86-6 at ¶¶
26 15-17 (citing, inter alia, Huynh v. Hous. Auth. of Cty. of Santa Clara, No. 14-CV-02367-LHK,
27 2017 WL 1050539, at *5-7 (N.D. Cal. Mar. 17, 2017) (approving hourly rates of \$800 for class of
28 1990 graduates, \$862.07 for class of 1996 graduates, and \$236-275 for paralegals); Cotter v. Lyft

1 Inc., No. 13-cv-4065-VC, 2017 WL 1033527, Dkt. No. 310 (N.D. Cal. Mar. 16, 2017)
 2 (approving hourly rates of \$800 for class of 1996, \$500 for class of 2010, \$325 for class of 2014,
 3 and \$200 paralegal rate); California Building Industry Assn. v. City of San Jose, et al., No.
 4 110CV167289 (Santa Clara Cty. Super. Ct. Dec. 23, 2016) (approving hourly rate of \$810 for a
 5 1980 graduate and \$710 for a 1998 graduate); *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*,
 6 No. 14-cv-4086-NC, Dkt. No 139 (N.D. Cal. Dec. 6, 2016) (approving hourly rates of \$900 for
 7 class of 1980, \$895 for class of 1985, \$740 for class of 1997, and a \$275 paralegal rate); *Civil*
 8 *Rights Educ. & Enf’t Ctr. v. Ashford Hosp. Tr., Inc.*, No. 15-CV-00216-DMR, 2016 WL 1177950,
 9 at *5 (N.D. Cal. Mar. 22, 2016) (approving of hourly rates of \$750 per hour for a 1991 graduate
 10 and \$225 for a paralegal); *Alden v. Alden*, No. CIV 524269 (San Mateo Cty. Super. Ct. Nov. 23,
 11 2015) (approving hourly rates of \$990 for 41 years of experience, \$875 for 22 years, \$600 for ten
 12 years, and \$500 for three years).

13 The Court finds that the evidence submitted by Plaintiff demonstrates that the rates
 14 requested by the attorneys here are in line with the overall market rate for attorneys of similar
 15 abilities and experience in this District. Defendants have not challenged any of Plaintiff’s evidence
 16 in support of the hourly rates, nor have they supported their arguments with evidence of their own
 17 regarding legal rates in the community. Rather, they insist that the reasonable hourly rates are
 18 \$500/hour for Mr. Witteman and \$650/hour for Mr. Lagos because that is the amount that
 19 Plaintiff’s counsel demanded in their fee negotiations. (Dkt. No. 89 ¶¶ 2-4.) Federal Rule of
 20 Evidence 408 prohibits a party from disclosing statements made or positions taken during
 21 settlement negotiations. See Fed. R. Evid. 408(a)(2) (“evidence of...conduct or a statement made
 22 during compromise negotiations about a claim” is not admissible). The Court thus will not
 23 consider the Defendants’ arguments to the extent they are based on positions Plaintiff’s counsel
 24 may have taken during settlement negotiations. Any such statements are inadmissible and
 25 irrelevant to counsels’ actual reasonable hourly rate. Defendants only other reference to Plaintiff’s
 26 counsels’ requested hourly rates is an argument that counsels’ hourly rates adequately
 27 compensates them for their work such that a multiplier would be inappropriate. The Court
 28 addresses this argument below in the context of Plaintiff’s request for a multiplier.

1 Given the evidence Plaintiff offered in support of the requested hourly rates and
2 Defendants’ failure to offer any evidence disputing the reasonableness of these rates, the court
3 finds that the requested hourly rates are reasonable. See *United Steelworkers of Am. v. Phelps*
4 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.1990) (remanding case and instructing court to “presume
5 [] requested rates are reasonable” where moving party submitted evidence supporting rates and
6 opposing party did not support arguments about lower rates with evidence).

7 **B. Hours Reasonably Expended**

8 A reasonable number of hours is equal to the number of hours that the attorney could
9 reasonably bill to a private client. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir.
10 2013). Thus, the court should only award fees based on “the number of hours reasonably expended
11 on the litigation” and should exclude “hours that are excessive, redundant, or otherwise
12 unnecessary .” *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983). “There is no precise rule or
13 formula for making these determinations,” and the court “necessarily has discretion in making this
14 equitable judgment.” *Id.* at 436-37. The party seeking fees bears the initial burden of establishing
15 the hours expended litigating the case and must provide detailed time records documenting the
16 tasks completed and the amount of time spent. *Hensley*, 461 U.S. at 434; *Welch v. Met. Life Ins.*
17 *Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007). The burden then shifts to the “challenging party to
18 point to the specific items challenged, with a sufficient argument and citations to the evidence.”
19 *Premier Med. Mgmt. Sys., Inc. v. Cal. Ins. Guarantee Ass’n*, 163 Cal.App. 4th 550, 564 (2008). If
20 the party opposing the motion “cannot come up with specific reasons for reducing the fee request”
21 that are persuasive, the court “should normally grant the award in full” or, at most, impose a ten
22 percent reduction. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1116 (9th Cir. 2008).

23 Here, Plaintiff’s attorneys have filed with the Court itemized billing statements and
24 declarations indicating that Mr. Witteman expended 440.3 hours, Mr. Lagos expended 82.619
25 hours, and Ms. Hubbs spent 41.3 hours, plus an additional 41.75 hours for fees on fees. (Dkt. Nos.
26 86-2; 86-3; 91-1 at ¶ 8.) These declarations and exhibits are “satisfactory evidence” of attorney’s
27 fees. See *Camacho*, 523 F.3d at 980. Thus, Plaintiff has satisfied her initial burden of producing
28 evidence demonstrating the reasonableness of the requested fee. The burden thus shifts to

1 Defendants to submit “evidence ... challenging the accuracy and reasonableness of the ... facts
2 asserted by the prevailing party in its submitted affidavits.” Id.; see also Premier Med. Mgmt., 163
3 Cal.App. 4th at 564.

4 **1) Travel Time**

5 Defendants insist that Mr. Witteman’s 33.5 hours of travel time should be compensated at
6 a lower hourly rate of \$250 per hour. Defendants provide no legal authority for this position;
7 indeed, they do not provide any argument at all and instead attempt to incorporate by reference
8 contents of letters sent to Plaintiff’s counsel attempting to informally negotiate the fees.³ (Dkt.
9 Nos. 89-1; 89-2.) “[T]his district has long granted prevailing parties their full hourly rate for
10 travel time.” Cotton v. City of Eureka, Cal., 889 F. Supp. 2d 1154, 1177 (N.D. Cal. 2012); see
11 also Santiago v. Equable Ascent Fin., No. 11-3158-CRB, 2013 WL 3498079, at *5 (N.D. Cal. July
12 12, 2013) (“A lawyer’s travel time is recoverable at a professional hourly rate because time spent
13 traveling is time the attorney could not spend performing legal services for clients.”).
14 Accordingly, Mr. Witteman is entitled to his full rate for the 33.5 hours of travel time billed.

15 **2) Conferencing Time**

16 Defendants also object to billing entries consisting of meetings or discussions between co-
17 counsel; again, without citation to particular billing entries or even a total amount of the fees to
18 which they object on this basis. “Collaboration does not necessarily amount to duplication that is
19 not compensable.” Premier Med. Mgmt. Sys., Inc., 163 Cal.App. 4th at 562. Defendants have
20 failed to meet their burden to show that any of the unspecified time Mr. Witteman and Mr. Largos
21 spent conferencing was unreasonable. No deduction is warranted based on conferencing or
22 collaboration between counsel.

23 **3) Attorneys Billing for Clerical Time**

24 Defendants also object to “attorney billing for paralegal or clerical work,” but again fail to
25 cite to particular billing entries or even provide a total amount Defendants believe should be

26 _____
27 ³ To the extent Defendants expect the Court to decipher the hand-written notations they made on
28 Plaintiff’s time records as part of the meet and confer process, the Court declines to do so. If
Defendants felt strongly that any particular entry was unreasonable or improper, they should have
made a proper showing to this effect in their motion.

1 deducted for this clerical work. (Dkt. No. 88 at 4:19-20.) Defendants have thus failed to meet
2 their burden to demonstrate that any particular entries are excessive and the Court declines to
3 make any deductions on this basis.

4 **4) Reductions to Particular Entries**

5 Defendants also object to “billing which was outside the scope of the underlying litigation,
6 such as research regarding tax liability” and “excessive [entries] such as reducing a 5.8 hour entry
7 of ‘exhaustive research on qualified immunity’ to 2.9 hours.” (Dkt. No. 88 at 4:19-22.)
8 Defendants have again failed to point to any specific billing entries other than the one regarding
9 qualified immunity and thus have failed to meet their burden to demonstrate that any particular
10 entry is unreasonable. Further, Defendants’ deduction to Plaintiff’s entry regarding qualified
11 immunity research is improper. Qualified immunity “sometimes requires complicated analysis of
12 legal issues.” Crawford-El v. Britton, 523 U.S. 574, 598 (1998). Indeed, this was the case here as
13 the Court denied Plaintiff’s motion for summary judgment because it could not conclude as a
14 matter of law that there was no set of provable facts which would entitle Officer Wright to at least
15 qualified immunity. (Dkt. No. 72 at 13.) That Plaintiff’s counsel spent nearly six hours
16 researching these complicated issues was hardly excessive and was, instead, good lawyering.

17 **5) Fees on Fees**

18 Finally, Defendants object to Plaintiff’s request for fees on fees. Defendants insist that the
19 fee motion was unnecessary in light of their “reasonable settlement offer.” (Dkt. No. 88 at 5:23.)
20 However, the Ninth Circuit has repeatedly held that time spent by counsel establishing the right to
21 a fee award is compensable. See, e.g., Clark v. City of Los Angeles, 803 F.2d 987, 992 (9th Cir.
22 1986); Ketchum, 24 Cal.4th at 1137 (“prevailing parties are compensated for hours reasonably
23 spent on fee-related issues. A fee request that appears unreasonably inflated is a special
24 circumstance permitting the trial court to reduce the award or deny one altogether.”) Accordingly,
25 Plaintiff is entitled to fees for the 37.75 hours Mr. Witteman spent on the fee motion and reply,
26 and the 4 hours Mr. Lagos spent on the fee motion.

27 **C. Multiplier**

28 Under California law, a multiplier or lodestar enhancement is available under certain

1 circumstances such as when, as here, a Section 1983 claim is accompanied by a Bane Act claim.
2 See *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1106 (9th Cir. 2014) (“If the Estate had
3 prevailed on its § 52.1 claim, it could have received a multiplier of its attorneys’ fees to account
4 for the risk of contingent representation.”). When the litigation “involved a contingent risk or
5 required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to
6 approximate the fair market rate for such services” the court may adjust the lodestar accordingly.
7 *Ketchum*, 24 Cal.4th at 1132. Courts generally consider the following factors in determining
8 whether a multiplier is appropriate: “(1) the novelty and difficulty of the questions involved, (2)
9 the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded
10 other employment by the attorneys, (4) the contingent nature of the fee award.” *Id.* The party
11 seeking a lodestar enhancement bears the burden of proving the multiplier is warranted. *Id.* at
12 1138.

13 Here, Plaintiff requests a 1.5 multiplier. Plaintiff argues that this amount fairly
14 compensates counsel for the contingent nature of the case and the substantial risk that counsel
15 would not recover for the over 400 hours of work counsel put in on the case and the \$10,000 in
16 costs counsel advanced. Further, Plaintiff emphasizes that counsel took the case as a referral from
17 Alameda County Bar Association, an out-of-county referral source, and achieved significant
18 results on Plaintiff’s behalf. Finally, Plaintiff insists that the case presented novel and difficult
19 questions regarding warrantless entry and consent, as well as a Bane Act claim based on threats in
20 response to Plaintiff’s exercise of her First Amendment rights.

21 Defendants object to any multiplier insisting that the outcome was not so unusually
22 favorable as to warrant a multiplier, that the legal questions were not that complicated, that
23 counsel has not shown they were precluded from other employment while this action was pending,
24 and that Plaintiff waived or dismissed certain claims including her Monell claim, defamation
25 claim, wage loss claim, and her claims for more than garden variety emotional distress. In their
26 “supplemental confidential opposition brief” Defendants also argue—without citation to any
27 authority—that because Plaintiff signed a release under California Civil Code Section 1542 she is
28

1 precluded from pursuing a multiplier. (Dkt. No. 90-4 at 4.⁴) Defendants make a related argument
2 that it would be unfair to award a multiplier because that is not what they envisioned when they
3 settled the claims here and agreed that Plaintiff was a prevailing party for purposes of any fee
4 motion. Lastly, Defendants insist that counsels’ hourly rates adequately compensate counsel and
5 that a multiplier would constitute impermissible double-counting. These arguments are
6 unpersuasive.

7 “[T]he unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it
8 does not include any compensation for contingent risk, extraordinary skill, or any other factors a
9 trial court may consider.” Ketchum, 24 Cal.4th at 1138. In Ketchum, the California Supreme
10 Court held that “contingency cases as a class” warrant special consideration in terms of fee
11 enhancements, explaining that enhancements may make cases involving enforcement of
12 constitutional rights “economically feasible to competent private attorneys.” Id. at 1133. As such,
13 “[a] contingent fee must be higher than a fee for the same legal services paid as they are
14 performed” because “[t]he contingent fee compensates the lawyer not only for the legal services
15 he renders but for the loan of those services. The implicit interest rate on such a loan is higher
16 because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer)
17 is much higher than that of conventional loans.” Id. at 1132–33 (citation and quotation marks
18 omitted).

19 Counsel took considerable risk in taking on this case both in terms of the amount of time
20 and costs counsel advanced, but also in terms of the viability of the claims giving the thorny
21 qualified immunity issues. The legal issues in this case were complicated—Defendants’ brief
22 concedes as much stating that “the legal question relating to the applicability of qualified
23 immunity” based on the warrantless entry were “unique.” (Dkt. No. 88 at 3:1-2.) Indeed, at the
24 summary judgment hearing, the Court questioned the parties at length regarding these legal issues
25 noting the complexity of the entry and consent issue and the need spend extra time preparing the
26 jury instructions in this case. In addition, the results counsel achieved were significant and they

27 _____
28 ⁴ Defendants’ stipulated administrative motion to file this brief under seal because it discusses the
terms of the parties’ confidential settlement is GRANTED. (Dkt. No. 90.)

1 were achieved without the added expense and burden for all the parties of a trial.

2 Finally, Defendants' argument that a multiplier would be unfair here because it was not
3 discussed during the parties' settlement negotiations is unpersuasive. California law clearly
4 provides for a multiplier in cases such as this. Chaudhry, 751 F.3d at 1106. Contrary to
5 Defendants' argument, this is not such a novel result. See Dixon v. City of Oakland, No. C-12-
6 05207 DMR, 2014 WL 6951260, at *14 (N.D. Cal. Dec. 8, 2014) (awarding 1.1 multiplier on a
7 Bane Act claim following a settlement). In light of this clear authority, to avoid the possibility of
8 a multiplier Defendants could have negotiated a settlement of the federal claims with dismissal of
9 the state claims. They did not. In contrast to the multiplier authority, Defendants do not cite any
10 authority, and the Court is unaware of any, for the proposition that Plaintiff's 1542 release
11 precludes her from seeking a multiplier here. Finally, counsels' hourly rate does not adequately
12 compensate counsel for the risk of this contingent case. See Ketchum, 24 Cal. 4th at 1133.

13 The Court concludes that a modest multiplier is appropriate. While Defendants did settle
14 the Bane Act claim, there are serious questions about how much the settlement could have
15 included with respect to that claim given that Sergeant Priebe was not a defendant at the time it
16 settled. Without Sergeant Priebe as a defendant, Plaintiff's Section 1983 and Bane Act claims are
17 largely coextensive. While these circumstances do not preclude relief under both claims, and
18 while as a prevailing party on the Bane Act claim Plaintiff is eligible for a multiplier, the
19 interconnectedness of the claims is a factor the Court considers in determining the amount of the
20 multiplier. The Court thus reduces Plaintiff's multiplier request to 1.1. In addition, the multiplier
21 only applies to the lodestar prior to the fees on fees. *Id.* at 1141. The Court thus applies the
22 multiplier to the lodestar without the inclusion of fees on fees (\$24,537.50 for the 37.75 hours of
23 work done by Mr. Witteman and \$3,000 for the 4 hours of fees on fees work done by Mr. Lagos).

24 **CONCLUSION**

25 For the reasons stated above, Plaintiff's motion for attorney's fees and costs is GRANTED.
26 Mr. Witteman is awarded \$261,690 times the 1.1 multiplier plus \$24,537.50 for fees on fees for a
27 total of \$312,396.50 and Mr. Lagos is awarded \$71,914.25 times the 1.1 multiplier plus \$3,000 for
28 fees on fees for a total of \$82,105.68. Plaintiff is awarded a total of \$11,444.07 in costs with

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

\$6,057.43 going to Mr. Witteman and \$5,386.64 going to Mr. Lagos.

This Order disposes of Docket Nos. 86 and 90.

IT IS SO ORDERED.

Dated: November 30, 2017



JACQUELINE SCOTT CORLEY
United States Magistrate Judge