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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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ERICK GALLO; ARMANDO GUTIERREZ;  
ANGEL MIRAMONTES; ANTONIO  
MIRAMONTES; LUIS MIRAMONTES;  
MANUEL MONTES; and SAMUEL  
ALVAREZ HARO, individually, on behalf of  
all others similarly situated, and on behalf of  
the general public,

Plaintiffs,

v.

MASCO CORPORATION, a corporation,  
MASCO SERVICES GROUP  
CORPORATION, a corporation, GUY  
EVANS, INC., a corporation; BUILDER  
SERVICES GROUP, INC., a corporation; and  
DOES 1 through 20, inclusive

Defendants.

Civil No. 08cv0604-CAB

**ORDER REGARDING MOTION FOR  
ATTORNEYS' FEES**

**[Doc. No. 95]**

Before the Court is plaintiffs' motion for attorneys' fees and costs in the above-captioned case and related case, *Ibarra, et al v. Builder Services Group, et al*, Case No. 10cv199. The parties reached a settlement of these cases in June of 2010. As part of the negotiated agreement, the parties agreed that plaintiffs' counsel could submit an application for fees and costs in these cases for a final determination by the undersigned.<sup>1</sup> Defendants could object in whole or part. The

<sup>1</sup> The parties consented to the Magistrate Judge and both cases were referred to the undersigned for all purposes on September 22, 2010. [Doc. No. 85.]

1 total of any award by the Court cannot exceed an agreed ceiling of \$400,000. The parties finalized  
2 and executed the settlement during the months that followed and the cases were dismissed with  
3 prejudice on December 16, 2010. [Doc. No. 98.]

4 Plaintiffs filed their application for fees and costs on December 15, 2010. [Doc. No. 95.]  
5 Defendants filed their opposition on January 18, 2011. [Doc. No. 100.] Plaintiffs filed a reply on  
6 January 25, 2011. [Doc. No. 103.] Defendants were given leave to file a surreply which was  
7 submitted on February 4, 2011. [Doc. No. 106.] The Court found the motion suitable for  
8 determination on the papers and it was submitted without oral argument pursuant to Civil Local  
9 Rule 7.1(d)(1).

## 10 I. BACKGROUND

11 *Gallo et al v. Masco Corporation, et al*, 08cv604 (“Gallo Case”) was filed on April 2, 2008  
12 as a class action with six named plaintiffs alleging 10 separate causes of action for violations of  
13 federal and state wage and hour laws.<sup>2</sup> The complaint was amended on May 22, 2008, adding a  
14 seventh named plaintiff, but no new causes of action.

15 For the next year discovery proceeded and settlement discussions were held with the  
16 expectation that plaintiffs would seek certification of a class of defendants’ employees numbering  
17 approximately 100 individuals. Plaintiffs last day to file their motion for class certification was  
18 June 12, 2009 [Doc. No. 27], however by May 2009, plaintiffs’ counsel had decided not to proceed  
19 with the class allegations. After meeting with over 50 of the putative class members, plaintiffs’  
20 counsel concluded it would be best to proceed as a multi-plaintiff case instead of seeking class  
21 certification.<sup>3</sup> [Doc. No. 95-1, at 4-5.]

22 On June 29, 2009, plaintiffs filed a motion for leave to file a second amended complaint  
23 adding 52 plaintiffs to the Gallo Case, withdrawing the class and collective action allegations,

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27 <sup>2</sup> There are three additional causes of action for employment related violations specific to  
individual plaintiffs and not asserted on behalf of the class.

28 <sup>3</sup> Counsel were unsuccessful in their efforts to contact the remaining putative class members.  
[Doc. No. 95-1, at 5 n.5.]



1 To qualify as a prevailing party, a plaintiff must obtain at least some relief on the merits of  
2 his claim, by judgment, consent decree or settlement. *Farrar v. Hobby*, 506 U.S. 103, 111 (1992)  
3 (plaintiff must secure relief that directly benefits him at the time of settlement). Although the court  
4 in *Farrar* addressed recovery of fees for a civil rights violation, this Court applies the articulated  
5 principle to the settlement of a wage case that provides for the statutory recovery of fees. The  
6 plaintiffs argue that they prevailed in these cases in that the settlement provided for payment to all  
7 60 plaintiffs for dismissal of their wage claims. The defendants do not directly challenge that the  
8 plaintiffs qualify as a prevailing party in this case, although they do argue that plaintiffs would not  
9 have ultimately prevailed on their claims at trial. Given that these disputed claims settled and  
10 plaintiffs received a direct benefit in the settlement, the Court finds the plaintiffs the prevailing  
11 party and entitled to the recovery of reasonable fees and costs.

### 12 III. REASONABLE FEES AND COSTS

13 The calculation of a reasonable fee award involves a two-step process. First, the court must  
14 calculate the “lodestar figure” by taking the number of hours reasonably expended on the litigation  
15 and multiplying it by a reasonable hourly rate. Taken into account in either the reasonable hours  
16 component or the reasonable rate component of the lodestar calculation are: “(1) the novelty and  
17 complexity of the issues; (2) the special skill and experience of counsel; (3) the quality of  
18 representation; (4) the results obtained; and (5) the contingent nature of the fee agreement.”  
19 *Morales v. City of San Rafael*, 96 F.3d 359, 364 (9th Cir. 1996). The second step involves the  
20 district court, in its equitable discretion, adjusting this amount “on the basis of other  
21 considerations.” *Lytle v. Carl*, 382 F.3d 978, 988 (9th Cir. 2004).

22 The prevailing attorneys bear the burden of establishing entitlement to an award and must  
23 document the appropriate hours expended and hourly rates. *Hensley v. Eckerhart*, 461 U.S. 424,  
24 437 (1983). Once the applicants submit evidence of the appropriate hours spent on litigation, “the  
25 party opposing the fee application has a burden of rebuttal that requires submission of evidence to  
26 the district court challenging the accuracy and reasonableness of the hours charged.” *Gates v.*  
27 *Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). Applicants should make a good faith effort to  
28 exclude excessive, redundant, or otherwise unnecessary hours from a fee request. *Hensley*, 461

1 U.S. at 434. “The district court has a great deal of discretion in determining the reasonableness of  
2 the fee.” *Gates*, 987 F.2d at 1398.

#### 3 IV. REASONABLE HOURLY RATES

4 A reasonable hourly rate is calculated according to the prevailing market rates in the  
5 relevant community. *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001). The community  
6 where the court sits is the relevant market for determining reasonable fees. *Deukmejian*, 987 F.2d  
7 at 1405. Two law firms represented the plaintiffs, Rukin Hyland Doria & Tindall, LLP, located in  
8 San Francisco, California, and Gullede Law Group, located in Ventura, California. Neither firm  
9 is located in this District Court’s community.

10 John Hyland provided a declaration on behalf of the Rukin firm. He stated he has practiced  
11 for 15 years, exclusively in the area of employment law with extensive experience in wage and  
12 hour law. [Doc. No. 95-3 at ¶4.] He states his hourly rate in this case was \$475. He was assisted  
13 by two Spanish-speaking associates Kate Hege and Carole Vigne,<sup>4</sup> who were billed at \$300 an hour  
14 and two paralegals, Mark Gains and Maia Siu, who were billed at \$175 an hour. [*Id.* at ¶8.]

15 Linda Gullede provided a declaration on behalf of the Gullede firm. She stated that she  
16 has practiced law for 12 years, exclusively in the area of employment law with extensive  
17 experience in wage and hour law. [Doc. No. 95-4 at ¶4.] She is fluent and literate in Spanish and  
18 states her hourly rate in this case was \$400. Gullede stated that her partner Woody Gullede also  
19 practices in employment law, advising companies on wage and hour practices, and his hourly rate  
20 in this case was \$400. The Gulledees were assisted by a Spanish-speaking paralegal, Maria  
21 Azunce Garcia, who was billed at \$150 an hour. [*Id.* at ¶¶4, 8.]

22 Plaintiffs cite the Court to three cases from the Southern District as evidence that the rates  
23 claimed by their counsel are in line with those prevailing in the community, for similar services  
24 and comparable skill. Those cases found lead counsel rates in the range of \$400 to \$425 an hour,  
25 \$220 to \$250 for an associate and \$125 for a paralegal to be reasonable hourly rates in this  
26 community. *See Kochenderfer v. Reliance Standard Life Ins. Co*, 2010 WL 1912867, \*4 (S.D. Cal.

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28 <sup>4</sup> Mr. Hyland does not speak Spanish and “all but one or two of the plaintiffs spoke only Spanish.” [Doc. No. 95-3 at ¶4.] Consequently Mr. Hyland relied upon his associates and his co-counsel Linda Gullede and her paralegal to communicate with the plaintiffs.

1 Apr. 21, 2010); *Fleming v. Coverstone*, 2009 WL 764940, \*7 (S.D. Cal. Mar. 18, 2009); *Cornwell*  
2 *v. Belton*, 2008 WL 80724,\*1 (S.D. Cal. Jan. 7, 2008). [Doc. No. 95-1, at 14.]

3 Defendants correctly point out that “the fee applicant has the burden of producing  
4 satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line  
5 with those prevailing in the community for similar services of lawyers of reasonably comparable  
6 skill.” *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 (9th Cir. 1987). [Doc. No. 101, at 7.]  
7 Each of the cases relied upon by plaintiffs reflects an hourly rate generally less than the amount  
8 requested by the plaintiffs’ counsel<sup>5</sup> and none of the cases are wage and hour cases. Plaintiffs offer  
9 no analysis of the subject matter, services and skills of the lawyers in the cited cases to demonstrate  
10 how those rates support the generally higher rates they request. Defendants offer no evidence that  
11 the rates approved in this District Court and offered by plaintiffs as evidence of reasonable rates in  
12 this community, are not appropriate in this case.

13 Based on the Court’s knowledge of prevailing standards in the community, and without  
14 further evidence from the parties beyond the cases cited by plaintiffs in support of their application,  
15 the Court applies the following rates as reasonable in this case:

16 \$400 an hour for partners John Hyland, Linda Gulledge and Woody Gulledge;

17 \$220 an hour for associates Kate Hege and Carole Vigne; and,

18 \$125 an hour for paralegals Mark Gaines, Maia Siu and Maria Azucena Garcia.

#### 19 **V. REASONABLE HOURS EXPENDED**

20 The fee applicant bears the burden of documenting the appropriate hours expended.  
21 *Hensley*, 461 U.S. at 437. The plaintiffs have not provided the Court with much assistance to  
22 assess the reasonableness of the hours claimed in their application. While counsel need not  
23 document how each minute was expended, *id.* at 437 n.12, in this case plaintiffs’ application is  
24 comprised of nine broad categories of work, each containing multiple discrete tasks with no  
25 information as to who worked on what task and the hours involved. Plaintiffs’ fee claim is more  
26 than double the maximum amount this Court could award under the terms of the settlement, so

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28 <sup>5</sup> Only the rates claimed by Linda and Woody Gulledge are within the ranges discussed in the  
cited cases. Accepting Ms. Gulledge’s rate as reasonable, the Court finds no basis for awarding Mr.  
Hyland almost 20% more per hour, for comparable work and comparable experience.

1 plaintiffs undoubtedly concluded that providing more detailed documentation was not necessary.  
2 [Doc. No. 95-1, at 17 (counsel's lodestar alone substantially exceeds the \$400,000 cap, counsel  
3 should not have to take any further discount).] The Court, however, cannot simply accept at face  
4 value the unsubstantiated hours claimed by plaintiffs, and default to the \$400,000 ceiling without  
5 examination. The plaintiffs needed to demonstrate the reasonableness of the hours claimed in each  
6 of these categories, and they have generally not met that burden.

7 The application is not rejected outright due to the plaintiffs inadequate documentation, as  
8 defendants advocate. The plaintiffs, however, are subject to the quality of their filing. To the  
9 extent the documentation is inadequate to support the claim or objective information is contrary to  
10 the claim, claims have been rejected. For certain of the plaintiffs' block categories, the work  
11 claimed within the category is supported by some objective details provided in plaintiffs'  
12 application or evident from the dockets, so the Court made an analysis of the reasonableness of the  
13 claim. Given the limitations presented by the plaintiffs' application, the Court exercises its  
14 discretion in determining the reasonableness of the plaintiffs' claimed fees, and makes the  
15 following findings.

16 **A. Investigations/Complaint**

17 Numerous discrete tasks are claimed under this category without any specific information.  
18 The Rukin Firm claims to have investigated the claims prior to filing the complaint in the Gallo  
19 Case; drafted and filed an administrative charge with the Department of Fair Employment and  
20 Housing on behalf of plaintiff Erick Gallo; drafted and filed the Gallo complaint and first amended  
21 complaint, met with and interviewed the Gallo putative class members; drafted and filed the Ibarra  
22 complaint. For this work the Rukin firm claims 33.9 hours of paralegal time; 13.2 hours of  
23 associate time; and 30 hours of partner time. There is no explanation as to who did what on what  
24 task.

25 Similarly, the Gulledge Firm claims to have investigated the claims before filing the Gallo  
26 complaint; drafted the Gallo complaint and first amended complaint; met with and interviewed the  
27 Gallo putative class members; and edited the Ibarra complaint. For this work, the Gulledge firm  
28 claims 42.5 hours of paralegal time and 57.4 hours of partner time. There is no explanation as to

1 who did what on what task. In total, plaintiffs claim 177 hours for the investigation of the claims  
2 and preparation of the complaints.

3 First, the Court notes that the Gallo Complaint and the first amended complaint are  
4 essentially the same document. The only addition was the inclusion of a seventh named plaintiff.  
5 So the fact that two separate firms are billing for the drafting of the first amended complaint is  
6 unacceptable. Next, the Court notes that the Ibarra Complaint largely mirrors the Gallo Complaint  
7 and does not introduce significant new information or claims. Again, that two firms are billing for  
8 work on that complaint is also unacceptable. Finally, the Court has no information regarding the  
9 time and effort expended on the administrative charge filed on behalf of plaintiff Gallo.

10 Despite the representation of plaintiffs' counsel that the firms divided responsibilities, it  
11 was neither reasonable or necessary for two firms to have billed time to the preparation and filing  
12 of the amended complaint or the Ibarra complaint. There is no way to discern how many hours  
13 were spent on these tasks and by whom. Further, given Mr. Hyland's representation that he does  
14 not speak Spanish, it would be unlikely he personally interviewed putative class members, but  
15 there is no way to discern what if any time is credited to him for this task.

16 The Court cannot accept the 177 hours at face value given the work claimed in this  
17 category. The Court credits 40 hours total to the investigation and preparation of the complaints  
18 and administrative charge, allowing the 13.2 hours of associate time and 26.8 as partner time. The  
19 Court also credits 52 hours total for interviewing of the putative class members (an hour per  
20 person), allowing 26 hours of paralegal time and 26 hours of partner time. Applying the adjusted  
21 rates, a total of \$27,274 is recoverable for investigation and preparation of the complaints.

#### 22 **B. Client Communications**

23 There is little explanation as to what constituted client communications, that was separate  
24 from the hours claimed as investigation, discovery, deposition preparation and settlement. It  
25 apparently included deposition scheduling by the Gulledge firm (presumably Ms. Garcia's claimed  
26 time). [Doc. No. 95-4 at ¶5.] There were 60 plaintiffs in these combined cases. According to Ms.  
27 Gulledge's declaration, she and Ms. Garcia "served as the primary contact for Plaintiffs and  
28 conducted all communications with them." [Doc. No. 95-4 at ¶4 (*emphasis added*).] Based on that



1 representation, the Court concludes that hours identified as client communications by other  
2 attorneys are at best duplicative, and are excluded. Ms. Gullede claims she spent 17.7 hours in  
3 client communications and Ms. Garcia spent 264.4 hours. The Court finds the time claimed for  
4 Ms. Garcia excessive, given the complete lack of supporting information. The Court credits one  
5 hour per plaintiff for deposition scheduling for a total of 60 hours and Ms. Gullede's claimed  
6 time. Applying the adjusted rates, a total of \$14,580 is recoverable for client communications.

7 **C. Written Discovery**

8 The work performed in this category is generally described as the propounding of and  
9 responding to written discovery and the review of documents produced by defendants. [Doc. No.  
10 95-3 at ¶5; Doc. No.95-4 at ¶5.] The plaintiffs in the Gallo Case each were served with 34 or more  
11 interrogatories; 26 requests for admission and 97 or more document requests. The plaintiffs served  
12 document requests on defendants for production of their employment records that resulted in a  
13 "substantial volume documents" to be reviewed and analyzed. [Doc No. 95-1, at 3.] Defendants  
14 do not contest these representations.

15 The materials submitted by counsel provide hours expended by partners, associates and  
16 paralegals with regard to written discovery, but no information whatsoever as to who did what with  
17 regard to these tasks. There is 136.15 hours of paralegal time; 64.7 hours of associate time; and  
18 120.9 hours of partner time. The average is about 46 hours per named plaintiff in the Gallo Case to  
19 review and prepare discovery responses and analyze each plaintiff's employment records, including  
20 translation services, not an unreasonable amount of time. Applying the adjusted rates, a total of  
21 \$79,612.75 is recoverable for written discovery.

22 **D. Depositions**

23 Five of the seven plaintiffs in the Gallo Case were deposed over a ten day period.  
24 Additionally defendants noticed the depositions of 52 of the individuals who eventually became  
25 the plaintiffs in the Ibarra Case, and actually deposed 21 of them over a two week period with four

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1 to five depositions each day.<sup>6</sup> [Doc. Nos. 95-1, at 6.] Plaintiffs deposed four of defendants'  
2 witnesses. Ms. Gullede states her firm handled the witness preparation and defense for four of the  
3 plaintiffs in the Gallo Case, and prepared the 21 witnesses who became the Ibarra Case plaintiffs,  
4 as well as taking the depositions of the defendants' witnesses. [Doc. No. 95-4 at ¶5.] She claims  
5 97 hours of paralegal time and 179.1 hours of partner time for those eight depositions and the  
6 additional 21 witness depositions. Mr. Hyland states his firm handled the witness preparation and  
7 defense for four of the plaintiffs in the Gallo Case, and prepared the 21 witnesses who became the  
8 Ibarra Case plaintiffs, as well. He claims 227.3 hours of associate time and 29.70 hours of partner  
9 time for four depositions and the same 21 witness depositions. According to the submissions by  
10 the parties, only five of the seven plaintiffs in the Gallo case were deposed and only one firm will  
11 be credited for the preparation of the 21 witnesses. The information provided by counsel is  
12 overlapping, contradictory and insufficient to make an informed analysis. There is no way of  
13 determining from the information provided what contribution the Rukin firm made in the  
14 deposition process, so their time is excluded as duplicative.

15 The Court accepts Ms. Gullede's declaration regarding time spent for the depositions.  
16 Applying the adjusted rates, a total of \$83,765 is recoverable for deposition time.

#### 17 E. Motions

18 The docket reflects that there were two joint motions filed in the Gallo Case to continue  
19 dates; a joint motion to dismiss a defendant; a discovery motion filed by defendants for which the  
20 court requested no briefing from plaintiffs; and the motion for leave to file the second amended  
21 complaint which was denied. The only motion filed in the Ibarra Case was plaintiffs' motion to  
22 remand which was pending when the case settled. The Court finds that the hours expended on the  
23 denied motion and the pending motion are not recoverable. Plaintiffs are allowed two hours of  
24 associate time for their participation in the preparation and filing of the joint motions. Applying  
25 the adjusted rates, a total of \$440 is recoverable for motion practice.

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27 <sup>6</sup> Defendants deposed these individuals when they were anticipated to be added as plaintiffs  
28 to the Gallo Case. That motion was denied, but that did not render the depositions irrelevant. [Doc.  
No. 101, at 4.] These individuals became the plaintiffs in the Ibarra Case, and at the very least were  
percipient witnesses in the Gallo Case.

1                    **F. Court Conferences/Hearings**

2                    There were three court conferences covered in this category. The Early Neutral Evaluation  
3 (“ENE”) Conference, the Case Management Conference (“CMC”) and the Pretrial Conference. No  
4 detailed description of the work performed related to these hearings is provided. The docket and  
5 the Court’s records, however, provide assistance in analyzing this claim.

6                    The ENE in the Gallo Case was held on August 6, 2008. It lasted approximately two hours  
7 and plaintiffs submitted a perfunctory three-page statement in advance of the hearing. The CMC  
8 was held on September 23, 2008 by telephone and it lasted no longer than 30 minutes. The parties  
9 submitted a four-page joint discovery plan for the hearing. The Pretrial Conference was held  
10 before District Judge Houston on April 5, 2010. It lasted less than 15 minutes. The preparation for  
11 this conference is covered in the category Pretrial Preparations (*infra*).

12                    The two law firms have claimed a total of 109.8 hours for preparation and attendance at  
13 these three conferences. The Court finds this unacceptable. Actual attendance at these conferences  
14 totaled approximately 2.75 hours – plaintiffs have specifically stated they did not include travel  
15 time for any of their court appearances. It is unreasonable for these firms to have invested in  
16 excess of 100 hours preparing for these conferences. Allowing for participation by lead counsel  
17 from each firm at each conference, that is a total of 5.5 hours of partner time. The Court will allow  
18 an additional 14.5 hours for preparation specific to these conferences, for a total of 20 hours of  
19 recoverable partner time. Applying the adjusted rates, a total of \$8,000 recoverable for  
20 participation in court conferences.

21                    **G. Pretrial Preparations**

22                    The plaintiffs’ application includes a number distinct tasks under this category without any  
23 specifics as to the actual time spent on each task. Further both the Rukin and Gulledge firm claim  
24 time for performing the same tasks, again without explanation as to who did what. As a result the  
25 Court is left with little guidance as to the reasonableness of the hours claimed.

26                    The Rukin firm claims time in this general category for preparing the pretrial disclosures,  
27 amended pretrial disclosures, objections to defendants’ pretrial disclosures, meeting and conferring  
28 with defendants’ counsel about the pretrial order, preparing and submitting the pretrial order and

1 amended pretrial order. For these tasks the Rukin firm claims 10.3 hours of paralegal time; 149.9  
2 hours of associate time and 68 hours of partner time. Based on the pretrial documents submitted  
3 by plaintiff in the docket, the Court finds this a reasonable amount of time for pretrial preparations.

4 The Gulledge firm claims time for the preparation of the same documents the Rukin firm  
5 claims to have prepared. Further the Gulledge firm claims time for the following “pretrial”  
6 preparations: conducting several witness interviews and preparing declarations; preparing damages  
7 calculations; and meeting with and preparing the Gallo Plaintiffs for trial. The Court finds none of  
8 these tasks recoverable. Declarations are not admissible at trial, so time spent on this is not  
9 reasonable as a pretrial preparation. Damages calculations were prepared as discovery responses  
10 and certainly in detail for settlement conferences. No new damage calculations should have been  
11 occurring at this final stage of the proceedings. Preparing the plaintiffs for trial was at best  
12 premature, as the parties had not even completed a pretrial conference with the Court and no trial  
13 date had been set. Any preparation would have had to have been repeated, so this was an  
14 unnecessary expense at this time.

15 Plaintiffs have provided no information to assist the Court in assessing how much time the  
16 Gulledge firm spent on these unrecoverable tasks, or on the same work claimed by the Rukin firm.  
17 As a consequence, the Court rejects the hours claimed by the Gulledge firm for pretrial  
18 preparations in their entirety as duplicative or unnecessary. Applying the adjusted rates, a total of  
19 \$61,465.50 is recoverable for pretrial preparations.

#### 20 **H. Settlement**

21 Under the category of “Settlement,” plaintiffs include the research and drafting of  
22 settlement conference statements, preparation and attendance at three court ordered settlement  
23 conferences, negotiations with defendants’ counsel throughout the case and finalization of the  
24 settlement agreement. A total of 178.7 hours of paralegal time, 31.1 hours of associate time, and  
25 225.4 hours of partner time is claimed. At the adjusted rates this would total \$119,339.50.

26 Plaintiffs provided no information as to how much time was spent by whom doing which  
27 specific task. As with the court ordered conferences discussed above, the Court looks to its records  
28 and the docket to test the plaintiffs’ claim. There were three Mandatory Settlement Conferences

1 (“MSC”) held in this case. The first was on March 23, 2009. The second was on January 13,  
2 2010. The last was on June 21, 2010, which resulted in the key term agreement between the  
3 parties and ultimately resolution of the two matters. The time in court for each conference was  
4 approximately two hours.

5 The first MSC was held when the Gallo Case was a putative class action. The other two  
6 MSCs, although held in the Gallo Case, after the class action allegations were dropped, involved  
7 the joint resolution of the claims in the Ibarra Case. As a consequence each conference considered  
8 the settlement of all claims of the 60 plaintiffs. The confidential submissions by plaintiffs’ counsel  
9 for the first MSC and the second MSC demonstrate significant time spent presenting the evidence  
10 collected, and applying the legal issues. The Court credits six hours of partner time, per firm, for  
11 attendance at these conferences, a total of 12 hours. For each hour spent in conference, the Court  
12 credits an additional seven hours, a day of preparation, for a total of 84 hours of partner time.  
13 Applying the adjusted rates, this totals \$38,400.

14 With regard to time spent in negotiations with the defendants’ counsel throughout the case,  
15 with no information provided by plaintiffs as this task, an allowance for this would be speculation.

16 With regard to the finalization of the settlement agreement, the Court credits two hours of  
17 paralegal time and one hour of partner time per plaintiff to document the settlement, for 120 hours  
18 of paralegal time, and 60 hours of partner time. Applying the adjusted rates, this totals \$39,000. A  
19 total of \$77,400 is recoverable for settlement.

#### 20 **I. Travel**

21 Plaintiffs’ application includes an entry for counsels’ travel time to court conferences and  
22 hearings, client meetings and for depositions. Plaintiffs, however, voluntarily excluded this claim  
23 from their application. The exclusion of time and expenses for travel is appropriate.

24 Given the subject matter of this case and the fact that all plaintiffs are located in the  
25 Southern District of California, a claim for recovery of travel time and expenses incurred by out-of-  
26 district counsel is not justified. There has been no showing that competent counsel could not have  
27 been retained locally and that the selection of out-of-district counsel was necessary. Moreover, in  
28 the current business climate, it has become far less common for counsel to be reimbursed by clients

1 for travel, particularly travel to meet with the client itself. Attorneys are expected to travel on their  
2 own time, at their own expense. The Court finds it unreasonable to shift the time and expense of  
3 travel by out-of district counsel to the defendants in this case, when it reasonably would not have  
4 been reimbursed by the plaintiffs and the case is not so novel that plaintiffs were compelled to go  
5 out of the Southern District of California to find competent counsel.

6 **J. Fee Recovery Summary**

7 In summary the Court finds that Plaintiffs' recovery of fees for a reasonable number of  
8 hours at a reasonable rate in each category of work identified by Plaintiffs is as follow:

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<b>Plaintiffs' Time Categories</b>	<b>Amount</b>
Investigations/Complaint	\$ 27,274.00
Client Communications	\$ 14,580.00
Written Discovery	\$ 79,612.75
Depositions	\$ 83,765.00
Motions	\$ 440.00
Court Conferences/Hearings	\$ 8,000.00
Trial Preparation	\$ 61,465.50
Settlement	\$ 77,400.00
Travel Time	\$ 0
<b>Total Fee Recovery</b>	<b>\$351,937.25</b>

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20 **VI. COSTS**

21 Plaintiffs also seek recovery of costs. As the prevailing party, the recovery of costs is also  
22 appropriate. Included in the plaintiffs' summary of costs are charges for copies; deposition  
23 transcripts; filing and legal service; mail/fax/phone charges; research; translation service fees;  
24 witness fees; and travel for a total of \$52,256.26. No documentation was provided in support of  
25 Plaintiffs' cost claim. Certain claimed fees the Court finds non-recoverable, others are accepted  
26 and some are partially rejected due to lack of supporting documentation.

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1 The following amounts are approved: \$764.55 for copies; \$9,746.71 for deposition  
2 transcripts; \$940.92 for mail/fax/phone charges; \$409.23 for legal research; \$1,670.56 for  
3 translation services; and \$143.55 for witness fees.

4 The plaintiffs claim \$3,449.06 for the “filing and service of pleadings.” [Doc Nos. 95-3 at  
5 ¶9 and 95-4 at ¶9.] The filing fee in federal court is \$350. There are no other filing fees in this  
6 Court. The filing fee in state court is \$320. Other than the complaint in the Ibarra Case, there is no  
7 evidence that any other filing fees were incurred in state court. Plaintiffs provided no information  
8 to explain the remaining \$2,779.06 claimed in this category. The filing and service in this district  
9 of pleadings and motions is electronic and incurs no service expenses on the parties. The  
10 application makes no reference to any subpoenas being served on third parties. The Court allows  
11 \$670.00 for filing fees.

12 Plaintiffs’ claim for \$35,131.68 in travel expenses is disallowed in its entirety, as discussed  
13 above.

14 In summary, the Court finds the following costs recoverable.

<b>Plaintiffs’ Cost Categories</b>	<b>Amount</b>
Copies	\$ 764.55
Deposition Transcripts	\$ 9,746.71
Filing & Legal Service	\$ 670.00
Mail/Fax/Phone	\$ 940.92
Research	\$ 409.23
Translation service fees	\$ 1,670.56
Witness Fees	\$ 143.55
Travel Expenses	\$ 0
<b>Total Cost Recovery</b>	<b>\$ 14,344.60</b>

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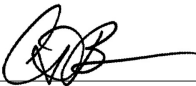
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**VII. CONCLUSION**

For the reasons set forth above, the Court awards Plaintiffs a **total of \$366,281.85 in fees and costs** as the prevailing party in this litigation. Defendants are hereby ordered to make payment of that amount to plaintiffs, in accordance with their instructions, no later than May 27, 2011.

**IT IS SO ORDERED.**

DATED: April 28, 2011

  
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**CATHY ANN BENCIVENGO**  
United States Magistrate Judge