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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 LUIS JESUS LOBATON, an individual;
11 HEDY JULCA, an individual; DIEGO
12 STEVEN LOBATON, an individual; and
13 “B.C.,” a minor, by and through his
14 mother and guardian *ad litem*, Hedy Julca
15 Plaintiff,

16 v.

17 CITY OF SAN DIEGO, a municipal
18 corporation; NATHAN PARGA, an
19 individual; KELVIN LUJAN, an
20 individual; SAM EULER, an individual;
21 ALI BAKHSHI, an individual; and DOES
22 1 through 200, inclusive.

23 Defendants.

Case No.: 3:15-cv-1416-GPC-DHB

**ORDER GRANTING JOINT
MOTION FOR ATTORNEY FEES
AND LITIGATION COSTS**

[Dkt. No. 55]

24 Before the Court is the parties’ Joint Motion for an Order Approving Attorneys’
25 Fees and Litigation Costs. Dkt. No. 55. Upon review of the moving papers, the
26 declarations and exhibits filed in support thereof, the applicable law, and for the reasons
27 set forth below, the Court **GRANTS** the parties’ request for fees and costs and awards
28 Plaintiffs attorneys’ fees and costs in the amount of \$240,000.

1
2 **BACKGROUND**

3 On June 26, 2015, Plaintiffs, Hedy Julca (“Hedy”), and her children, Luis Jesus
4 Lobaton (“Luis”), Diego Steven Lobaton (“Diego”), and Bruce Chourp (B.C.),
5 commenced the instant action. Dkt. No. 1. On August 20, 2015, Plaintiffs filed their
6 First Amended Complaint (“FAC”). FAC, Dkt. No. 3.

7 The FAC alleges that on July 29, 2014, six San Diego police officers burst into
8 Plaintiffs’ store without permission or privilege and illegally assaulted, detained, and
9 arrested Diego, Luis, and Hedy. *Id.* at 2–3. B.C. witnessed the police officers violently
10 assault, handcuff, and forcibly take away his mother and brother Luis. *Id.* at 30. As a
11 result of their injuries, Plaintiffs brought claims under 42 U.S.C. § 1983 as well as
12 various other state law causes of action, including assault, battery, violation of California
13 constitutional rights, false arrest/imprisonment, negligent infliction of emotional distress,
14 invasion of privacy, and negligence. *See generally* FAC.

15 On December 8, 2016, the parties reached a settlement agreement at a conference
16 before Magistrate Judge Louisa S. Porter. Dkt. No. 34. On April 25, 2017, B.C.’s
17 guardian *ad litem*, Hedy, filed a petition for compromise of minor B.C.’s disputed claim.
18 Dkt. No. 42. That same day, Plaintiffs and Defendants filed a joint motion for attorney
19 fees and litigation costs. Dkt. No. 43.

20 On June 16, 2017, the Court denied the parties’ joint motion for attorney fees and
21 litigation costs, but granted the petition for compromise of the minor’s disputed claim.
22 Dkt. Nos. 51, 52. The Court denied the parties’ joint motion for attorney’s fees because
23 the motion did not provide the Court with the information it required to assess the
24 reasonableness of those fees. Dkt. No. 51 at 2 (“To the extent that the parties wish for the
25 Court to assess the reasonableness of the attorney’s fees pursuant to 42 U.S.C. § 1988,
26 they must provide the Court with the information and argument it requires to make a
27 reasonableness determination under binding precedent in this Circuit.”). On July 3, 2017,
28 the parties supplemented its request and filed a revised joint motion for attorney fees and

1 litigation costs that included a memorandum of points and authorities, and exhibits, in
2 support of the motion. Dkt. No. 55 at 1–3.

3 DISCUSSION

4 The Civil Rights Attorney’s Fees Awards Act of 1976 provides that in specified
5 civil rights litigation, district courts “in its discretion, may allow the prevailing party,
6 other than the United States, a reasonable attorney’s fee as part of the costs.” 42 U.S.C.
7 § 1988; *see also City of Riverside v. Rivera*, 477 U.S. 561, 567 (1986). “The purpose of
8 § 1988 is to ensure effective access to the judicial process for persons with civil rights
9 grievances.” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal citations omitted).
10 The parties agree that Plaintiffs are prevailing parties in light of their settlement, *see* Dkt.
11 No. 52, and that plaintiffs, therefore, are entitled to attorneys’ fees pursuant to 42 U.S.C.
12 § 1988. Dkt. No. 55-1 at 1. Accordingly, the only remaining question before the Court is
13 whether the requested fees are reasonable.

14 “The initial estimate of a reasonable attorney’s fee is properly calculated by
15 multiplying the number or hours reasonably expended on the litigation times a reasonable
16 hourly rate.” *Blum v. Stenson*, 465 U.S. 886, 888 (1984). This initial estimate, known as
17 the “lodestar” figure, provides “an objective basis on which to make an initial estimate of
18 the value of a lawyer’s services.” *See Hensley*, 461 U.S. at 433; *City of Riverside*, 477
19 U.S. at 561–62. The lodestar figure is presumed to be the reasonable fee contemplated by
20 § 1988. *Id.* at 568.

21 “Adjustments to that fee then may be made as necessary in the particular case.”
22 *Blum*, 465 U.S. at 888. The district court should exclude from the initial fee calculation
23 “hours that were not reasonably expended.” *Hensley*, 461 U.S. at 434 (internal citations
24 omitted). “Counsel for the prevailing party should make a good faith effort to exclude
25 from a fee request hours that are excessive, redundant or otherwise unnecessary[.]” *Id.* at
26 434. Where a plaintiff has achieved “only partial or limited success, the product of hours
27 reasonably expended on the litigation as a whole times a reasonable hourly rate may be
28 an excessive amount.” *Id.* at 436. The “results obtained,” therefore, is a key factor to be

1 taken into account when adjusting the lodestar figure upward or downward. *See City of*
2 *Riverside*, 477 U.S. at 568; *see Hensley*, 461 U.S. at 436 (finding that “the most critical
3 factor is the degree of success obtained”). “Where a plaintiff has obtained excellent
4 results, his attorney should recover a fully compensatory fee, and the fee award should
5 not be reduced simply because the plaintiff fails to prevail on every contention raised in
6 the lawsuit.” *City of Riverside*, 477 U.S. at 562.

7 The district court “necessarily has discretion in making this equitable judgment,”
8 subject to the considerations discussed above. *Hensley*, 461 U.S. at 437; *see Gates v.*
9 *Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992) (observing that the “district court has a
10 great deal of discretion in determining the reasonableness of the fee and, as a general
11 rule, we defer to its determination[.]”). “[W]hile it is appropriate for a district court to
12 have discretion in determining the amount of a fee award in view of its superior
13 understanding of the litigation, it remains important for the district court to provide a
14 concise but clear explanation of its reasons for the fee award.” *Chalmers v. City of Los*
15 *Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986) (citing *Hensley*, 461 U.S. at 437).

16 **A. Reasonable Hourly Rates**

17 To determine a reasonable attorney’s fee award under the lodestar approach, a
18 court first considers whether Plaintiffs’ counsel’s hourly rates are reasonable. *See Blum*,
19 465 U.S. at 888. When evaluating the reasonableness of an hourly rate, the court looks to
20 the “rate prevailing in the community for similar work performed by attorneys of
21 comparable skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523
22 F.3d 973, 979 (9th Cir. 2008) (internal citations omitted). In this case, the relevant
23 community is the Southern District of California because it is “the forum in which the
24 district court sits.” *Id.* The burden is on the party requesting attorney’s fees to produce
25 “satisfactory evidence, in addition to the affidavits of counsel, that the requested rates are
26 in line with those prevailing in the community for similar services of lawyers of
27 reasonably comparable skill and reputation.” *Jordan v. Multnomah County*, 815 F.2d
28 1258, 1263 (9th Cir. 1987); *see also Blum*, 465 U.S. at 895 n.11. Evidence that a court

1 should consider includes “[a]ffidavits of the [movant’s] attorney and other attorneys
2 regarding prevailing fees in the community, and rate determinations in other cases,
3 particularly those setting a rate for the [movant’s] attorney[.]” *United Steelworkers of*
4 *Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

5 The Ninth Circuit has articulated a number of factors the district court should
6 consider in determining the reasonable hourly rate. Those factors include experience,
7 reputation, and ability of the attorney; the outcome of the results of the proceeding; the
8 customary fees; and the novelty or the difficulty of the question presented. *Kerr v.*
9 *Screen Extras Guild*, 526 F.2d 67, 70 (9th Cir. 1975), *abrogated on other grounds by* 505
10 U.S. 557 (1992). The existence of a contingent fee arrangement is also an element to
11 consider in analyzing fee petitions under *Kerr. Id.*

12 **B. Reasonable Hours Expended**

13 “The fee applicant bears the burden of documenting the appropriate hours
14 expended in the litigation and must submit evidence in support of those hours worked.”
15 *Deukmejian*, 987 F.2d at 1397. “By and large, the court should defer to the winning
16 lawyer’s professional judgment as to how much time he was required to spend on the
17 case” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).
18 However, courts may reduce the allowable hours if they are inadequately documented,
19 duplicative, excessive or otherwise unnecessary. *See Chalmers*, 796 F.2d at 1210.

20 **C. Analysis**

21 For the following reasons, the Court finds that an award of \$240,000 in attorneys’
22 fees and costs is reasonable under prevailing precedent.

23 Two attorneys represented Plaintiffs during these proceedings: Randall B. Hamud
24 and Michael R. Marrinan. Dkt. Nos. 55-2, 55-5. Hamud began his representation on
25 August 4, 2014. Dkt. No. 55-2 at 3. At the time he was hired, Hamud had been
26 practicing law since 1971, that is, for over 43 years. *Id.* From 1971 to 1978 he worked
27 as a Deputy City Attorney for the cities of Compton and Los Angeles. *Id.* Subsequently
28 he became in-house counsel at the Los Angeles headquarters of the ARCO oil company.

1 *Id.* Since 1985, Hamud has been a solo-practitioner in San Diego and has garnered praise
2 for his solo practice. *Id.* In 2001, he represented three young Muslim-Arab men who
3 were arrested in San Diego after the fallout from the 9/11 attacks. *Id.* His representation
4 of those three men, in turn, led the San Diego local bar to recognize him as an
5 “Outstanding Advocate.” *Id.*

6 Marrinan joined the case in May 2015 after he was approached by Hamud for his
7 expertise in police misconduct cases. Dkt. No. 55-2. Marrinan had been practicing
8 criminal and civil law for 36 years at the time he joined the case. For seven years, he
9 worked as an adjunct professor at the University of San Diego School of law, where he
10 taught a class on trial practice. Dkt. No. 55-5. Since then, he has been a faculty member
11 at various seminars specializing in 42 U.S.C. § 1983 litigation. *Id.* Through these
12 seminars, he has had the opportunity to speak to U.S. Border Patrol agents and California
13 police officers about civil rights issues. *Id.* By 2015, Marrinan had been specializing in
14 police misconduct civil rights cases for over twenty years. *Id.*

15 Accordingly, the Court concludes that the experience, reputation, and abilities of
16 these lawyers weighs in favor of finding that the instant request for \$240,000 in
17 attorneys’ fees is reasonable. Hamud spent over 680 hours on this case before it settled
18 and Marinnan spent 57 hours on it. Dkt. Nos. 55-2, 55-3. And by agreeing to take this
19 case on a contingent fee basis, both risked receiving no compensation whatsoever for
20 their time or effort. Dkt. No. 55-1. As such and especially considering their
21 backgrounds, expertise, and the prevailing rates in this district, it would have been
22 appropriate for this Court to set their fees at \$825.00 per hour. *See Exhibit 6, Medina v.*
23 *Metropolitan*, Case No. 12-cv-0460-JM-MDD (awarding Eugene Iredale, an attorney
24 with 37 years of experience, with \$850 per hour); *Exhibit 7, Makeaff v. Trump*
25 *University*, Case No. 10-cv-0940-GPC-WVG (awarding attorney with thirty years of
26 experience at \$825 per hour); *Exhibit 8, Grant v. Capital Mgmt. Servs.*, Case No. 10-cv-
27 2471-WQH-BGS (setting fees for attorney with 34 years of experience at \$875 per hour);
28 *Exhibit 9, In re Siliken Mfg. USA, Inc.*, Case No. 13-00119-CL-11 (where bankruptcy

1 judge set attorneys' fees at \$840 and \$890 per hour for counsel with 28 years of
2 experience). Had this Court set Hamud and Marinnan's rate at \$825 per hour, the
3 lodestar calculation would have been \$298,650.00 for Hamud and \$43,477.50 for
4 Marinnan, exclusive of clerk tasks and legal costs.

5 The joint motion, however, does not ask this Court to set an hourly rate for the
6 attorneys' fees, because the parties agreed on an award of \$240,000. After the settlement
7 conference with Magistrate Judge Porter, Plaintiff's counsel submitted their timesheet to
8 Defendants and indicated that they would be seeking \$381,877.50 in attorneys' fees and
9 costs. Dkt. No. 55-5 at 6. After reviewing the timesheets, counsel for Defendants
10 identified a number of hours that Defendants would object to if the matter were to be
11 litigated. *Id.* With these objections in mind, the parties conducted several rounds of
12 negotiations that resulted in the agreed-upon amount of \$240,000 in attorneys' fees and
13 costs.

14 The attorneys' fees and costs currently sought represent a significant reduction
15 from the fees and costs that Plaintiff's counsel calculated using the lodestar method.
16 Whereas Plaintiff's counsel stated that they accrued \$381,877.50 in attorneys' fees and
17 costs in litigating this case, they agreed to accept less than two-thirds of that amount after
18 deliberation with Defendants. Accordingly and given this substantial reduction, the fact
19 that the Court would have set Plaintiff's counsel's fees at \$825, and that the parties
20 agreed that the reduction fairly accounted for the adjustments that Defendants would have
21 sought from this Court, the Court concludes that the award of \$240,000 in attorneys' fees
22 and costs is reasonable.

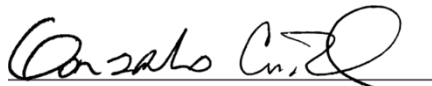
23 CONCLUSION

24 The Court finds that the amount of fees and costs requested by the parties is fair
25 and reasonable. Accordingly, the Court **GRANTS** the parties' joint motion for attorneys'
26 fees and litigation costs in this matter and **ORDERS** Defendant to pay Plaintiffs' counsel
27 \$240,000 in total for attorneys' fees and costs.

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IT IS SO ORDERED.

Dated: August 22, 2017


Hon. Gonzalo P. Curiel
United States District Judge

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