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UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

RIA MIALIZA O. PAESTE, et al.,
Plaintiffs,
vs.
GOVERNMENT OF GUAM, et al.,
Defendants.

CASE NO. 11-00008-CBM

ORDER GRANTING PLAINTIFFS’
MOTION FOR AN AWARD OF
ATTORNEY’S FEES AND COSTS

The matter before the Court is Plaintiffs’ Motion for an Award of Attorney’s Fees and Costs. [Docket No. 202.] For the reasons stated below, the Court **GRANTS** the Motion in part.

I. FACTUAL AND PROCEDURAL OVERVIEW

Plaintiffs Ria Mializa O. Paeste, Jeffrey F. Paeste, Sharon Zapanta, and Glenn Zapanta are residents and taxpayers on Guam who brought suit to challenge government practices relating to the administration of the Guam Territorial Income Tax (“GTIT”). (First Amended Class Action Complaint (“FAC”) at ¶ 1.)

1 Plaintiffs alleged that, even as the Government of Guam is unable to pay all
2 GTIT refunds, it distributes about \$15 million a year to certain taxpayers who
3 procure “expedited” refunds. (*Id.* at ¶ 3.) The expedited refunds are intended for
4 taxpayers suffering through a medical emergency, death in the family, or other
5 financial hardship. (*Id.* at ¶ 4.) Plaintiffs further alleged that, in practice, the
6 payments are *ad hoc* and/or are based on a system of political patronage or
7 personal connections. (*Id.* at ¶ 4.)

8 Following Defendants’ unsuccessful motion to dismiss Plaintiffs’ FAC
9 (Docket Nos. 38, 86, 136) the Court certified a class consisting of:

10 All persons and entities who have filed or will file a claim for refund
11 of an overpayment of the Guam Territorial Income Tax:

12 (i) which the Government of Guam has processed or will process and
13 deemed valid; (ii) who have met the procedural requirements outlined
14 in 26 U.S.C. §§ 7422(a) and 6532(a); and (iii) who nonetheless have
not received or will not receive their refund six months after filing the
claim for refund.

15 (Docket Nos. 132, 133.)

16 The parties engaged in discovery, including document requests, requests for
17 admission, interrogatories, and sixteen depositions. (Declaration of Daniel C.
18 Girard In Support of Plaintiffs’ Motion for an Award of Attorney’s Fees and Costs
19 (“Girard Decl.”) at ¶¶ 6-11, Docket No. 203; Resp. at 10.) Plaintiffs also filed two
20 motions to compel production of documents. [Docket Nos. 59, 118.]

21 Plaintiffs moved for summary judgment after the close of discovery.¹
22 [Docket No. 160, 153.] Following argument by the parties, the Court granted
23 Plaintiffs’ motion as to both of Plaintiffs’ causes of action. The Court found that
24 by failing to fully administer taxpayer claims for GTIT refunds in a timely,
25 orderly, and equitable manner, Defendants violated their administrative and
26

27 ¹ Around the same time, the parties participated in a settlement conference before
28 Magistrate Judge Joaquin V.E. Manibusan. [Docket Nos. 183, 184.] The settlement conference
was unsuccessful.

1 enforcement responsibilities under the Organic Act, 48 U.S.C. § 142li. (Findings
2 of Fact and Conclusions of Law at ¶¶ 6-7, 18-20, Docket No. 196.) The Court
3 also found that the Defendant officials denied taxpayers the right to equal
4 protection of the laws in violation of 42 U.S.C. § 1983 by partially administering
5 taxpayer claims for GTIT through an arbitrary, *ad hoc* process. (*Id.* at ¶¶ 8-16, 21-
6 30.)

7 Pursuant to Fed. R. Civ. P. 54(d), Plaintiffs timely moved for award of
8 attorney’s fees and costs within fourteen days of the Court’s entry of judgment in
9 their favor. [Docket Nos. 197, 202.] Plaintiffs request a total fee award of
10 \$2,187,805.50 (including time expended on this Motion), consisting of
11 \$1,452,590.50 in attorneys’ fees to the law firm of Girard Gibbs LLP (“GG”) and
12 \$735,215 in attorneys’ fees to the law firm of Lujan, Aguigui & Perez LLP
13 (“LAP”). (Girard Decl. at 7; Declaration of Ignacio C. Aguigui In Support of
14 Plaintiffs’ Motion for an Award of Attorney’s Fees and Costs (“Aguigui Decl.”) at
15 7, Docket No. 204.) Plaintiffs also request an award of costs in the total amount
16 of \$88,445.23, consisting of \$75,407.35 to the law firm of Girard Gibbs LLP and
17 \$13,037.88 to the law firm of Lujan, Aguigui & Perez LLP. (Girard Decl. at ¶ 37;
18 Aguigui Decl. at ¶ 48.)

19 II. STANDARD OF LAW

20 42 U.S.C. §1988 provides that in federal civil rights actions “the court, in its
21 discretion, may allow the prevailing party . . . a reasonable attorney’s fee as part of
22 the costs.” 42 U.S.C. §1988 (b). The party applying for fees “bears the burden of
23 establishing entitlement to an award and documenting the appropriate hours
24 expended and hourly rates.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).
25 When determining fees, the Ninth Circuit requires that district courts calculate a
26 “lodestar.” *See Allen v. Shalala*, 48 F.3d 456, 458 (9th Cir. 1995). The lodestar is
27 determined by multiplying the number of hours reasonably spent on a case by a
28 reasonable hourly rate. *See Hensley*, 461 U.S. at 433.

1 Assuming, arguendo, that Plaintiffs’ documentation of their attorneys’ fee
2 request is inadequate, the remedy is not denial of the fees altogether but “the
3 district court may reduce the award accordingly.” *Sorenson v. Mink*, 239 F.3d
4 1140, 1146 (9th Cir. 2001) (citing *Hensley*, 461 U.S. at 424). The Court will thus
5 determine a lodestar amount for Plaintiffs’ counsel, taking into account the type of
6 documentation submitted by Plaintiffs’ counsel.

7 **A. Lodestar Calculation**

8 **1. Reasonable Hours**

9 The Court finds that the 2,502.7 hours requested by the LAP Firm and the
10 3,337.8 hours requested by the GG Firm to be reasonable. Attorneys’ fees may be
11 awarded for work that is useful and of a type ordinarily necessary to secure the
12 final result obtained from the litigation. *Nadarajah v. Holder*, 569 F.3d 906, 923
13 (9th Cir. 2009) (citations omitted); *see also Moreno v. City of Sacramento*, 534
14 F.3d 1106, 1112 (9th Cir. 2008) (“[b]y and large, the court should defer to the
15 winning lawyer’s professional judgment as to how much time he was required to
16 spend on the case; after all, he won, and might not have, had he been more of a
17 slacker”); *Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir.1982)
18 (standard is whether work “would have been undertaken by a reasonable and
19 prudent lawyer to advance or protect [the] client’s interest in the pursuit of a
20 successful recovery”).

21 Defendants raise several objections to Plaintiff’s requested hours, arguing
22 that the hours should be reduced by 50% for overstaffing and time spent on media
23 contacts. (Resp. at 10, 13-14.) Defendants further argue that Plaintiffs are not
24 entitled to compensation for time requested either prior to the filing of the
25 operative complaint or for a motion to compel that was never ruled upon. (*Id.* at
26 12-13.) Defendants’ arguments are without merit. *See Moreno*, 534 F.3d at 1112
27 (rejecting post-hoc scrutiny of prevailing party’s strategy); *Cabrales v. County of*
28 *Los Angeles*, 935 F.2d 1050, 1052-53 (9th Cir. 1991) (attorneys’ fees can include

1 unsuccessful motion practice). The Court overrules Defendants’ objections.

2 **2. Reasonable Rate**

3 “[T]he established standard when determining a reasonable hourly rate is
4 the ‘rate prevailing in the community for similar work performed by attorneys of
5 comparable skill, experience, and reputation.’” *Camacho v. Bridgeport Fin., Inc.*,
6 523 F.3d 973, 979 (9th Cir. 2008) (citations omitted); *see also Blum v. Stenson*,
7 465 U.S. 886, 895, 104 S. Ct. 1541, 1547, 79 L. Ed. 2d 891 (1984) (42 U.S.C. §
8 1988 attorney’s fees to be calculated according to the “prevailing market rates in
9 the relevant community, regardless of whether plaintiff is represented by private
10 or non-profit counsel”).

11 **a. Relevant Community**

12 The parties disagree whether San Francisco or Guam hourly rates are
13 appropriate for the San Francisco-based Girard Gibbs LLP.² The Ninth Circuit
14 follows a “comparatively strict forum rule.” *Arbor Hill Concerned Citizens*
15 *Neighborhood Ass’n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d
16 182, 190 n. 5 (2d Cir. 2008). “Rates outside the forum may be used if local
17 counsel was unavailable, either because they are unwilling or unable to perform
18 because they lack the degree of experience, expertise, or specialization required to
19 handle properly the case.” *Camacho*, 523 F.3d at 979 (citing *Barjon v. Dalton*, 132
20 F.3d 496, 500-501 (9th Cir. 1997)); *see also Schwarz v. Sec’y of Health & Human*
21 *Servs.*, 73 F.3d 895, 907 (9th Cir. 1995) (finding plaintiff’s declaration that she
22 had difficulty retaining local counsel insufficient to show unavailability); *Gates v.*
23 *Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992) (unavailability of local counsel

24
25 ² Defendants do not argue that GG’s rates are unreasonable for the San Francisco legal
26 community. The Girard Declaration and attached exhibits as well as this Court’s knowledge of
27 hourly rates awarded in similar cases support finding that Plaintiff’s requested hourly rates are
28 reasonable if San Francisco were the relevant community. *See, e.g., Prison Legal News v.*
Schwarzenegger, 608 F.3d 446, 455 (9th Cir. 2010); *Rosenfeld v. United States DOJ*, 904 F.
Supp. 2d 988, 1002 (N.D. Cal. 2012); *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154, 1171
(N.D. Cal. 2012).

1 shown by “numerous declarations of San Francisco and Sacramento attorneys
2 which directly support their contention that Sacramento attorneys and law firms
3 with the requisite expertise and experience to handle this type of complex
4 institutional prison reform litigation were unavailable”); *S. Yuba River Citizens*
5 *League & Friends of River v. Nat’l Marine Fisheries Serv.*, No. CIV. S-06-2845
6 LKK, 2012 WL 1038131, at *6 (E.D. Cal. Mar. 27, 2012) (Karlton, J.)
7 (unavailability of local counsel shown after “plaintiffs . . . [unsuccessfully] sent
8 letters to seven law firms to solicit representation”); *Edwards v. City of Colfax*,
9 No. CIV S 07-2153 GEB EFB, 2011 WL 572171, at *8 (E.D. Cal. Feb. 15, 2011)
10 (Brennan, M.J.) (unavailability of local counsel shown after “plaintiffs
11 [unsuccessfully] contacted the . . . District Attorney’s Office, the Sierra Business
12 Counsel, and several local environmental organizations. . . . and also sought
13 representation from four attorneys in the Placer County/Nevada County area, and
14 six attorneys in the Sacramento area”).

15 In contrast, “theoretical” arguments that “San Francisco rates are necessary
16 to the enforcement of civil rights cases” in another forum fail unless supported
17 with evidence that “[local] rates preclude the attraction of competent counsel.”
18 *Barjon*, 132 F.3d at 501. A declaration that plaintiff’s counsel “sent an email to
19 over 600 members of the California Employment Lawyers Association seeking
20 co-counsel” is insufficient to show unavailability. *Jadwin v. Cnty. of Kern*, 767 F.
21 Supp. 2d 1069, 1127 (E.D. Cal. 2011); *see also Doe v. Bridgeport Police Dep’t*,
22 468 F. Supp. 2d 333, 338-39 (D. Conn. 2006) (citing *Polk v. N.Y. State Dep’t of*
23 *Corr. Servs.*, 722 F.2d 23, 25 (2d Cir.1983)).

24 Plaintiff’s counsel has failed to present any evidence that local counsel was
25 either unwilling or unavailable. The only explanation given for the use of GG
26 appears in the Aguigui Declaration and the Reply. Attorney Aguigui declares:

27 We believed that any lawsuit needed to be brought as a class action,
28 and given the complexity of the issues, and in order to maximize the

1 potential for success in bringing a case to Court and prevailing, my
2 partner . . . and I determined that it was necessary to go off-island and
3 seek counsel experienced in complex class action cases. To our
4 knowledge, no other Guam law firm brought suit to challenge the
5 Government's failure to properly administer GTIT refunds.

6 (Aguigui Decl. at ¶ 8.) The additional explanation provided in the Reply is
7 speculative:

8 The challenged tax refund practices had been in existence for more
9 than 20 years and were well known to the people of Guam. In that
10 time, no other attorneys stepped forward to represent a proposed class
11 of taxpayers. . . . This may have been because they did not want to
12 challenge the Governor of Guam and other high-ranking Government
13 officials . . . because they doubted the lawsuit would be successful, or
14 because of other reasons entirely. But [LAP], the only Guam law
15 firm willing to represent the class, made the reasoned judgment that it
16 was necessary to step up to the plate, and to partner with an off-island
17 firm with [GG's] experience and resources.

18 (Reply at 7:26-8:7.) These conclusory statements cannot support a finding that
19 local counsel was either unwilling or unavailable. *Compare Guam Soc'y of*
20 *Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 698 (9th Cir. 1996) (finding
21 that Guam counsel was unwilling based on declarations by local attorneys and
22 because the record showed plaintiffs faced threats of excommunication by the
23 Roman Catholic Church and death threats).

24 Not only is there an absence of evidence that would explain the reasoning
25 behind LAP's "reasoned judgment," but Plaintiffs' counsel's own fee application
26 contradicts the argument that GG provided experience and resources that were
27 otherwise unavailable on Guam.³ Out of a total 5,840.5 hours billed by Plaintiffs'
28 counsel, GG billed 3,337.8 or approximately 57%. (Girard Decl. at 7.) GG
Attorney Stein (1,602.5 hours), Law Clerk Kramer (485.15 hours), and junior

³ LAP's fee application references their work on *Torres v. Guam*, another consolidated class action which dealt with complex tax issues. Case No. 04-cv-38 (D. Guam 2004) (Gatewood, C.J.). Notably, in that case, Plaintiffs' counsel partnered with local co-counsel firm Cabot Mantonona LLP. (*Id.*, Docket No. 163.)

1 Attorneys Lindstrom, Bluestone, and Tepper (260.9 aggregate hours) billed nearly
2 three-quarters of GG's hours. (*Id.*) Attorney Stein is a 2007 law school graduate.
3 (Girard Decl., Ex. D.) It appears that Attorney Stein had primary responsibility
4 for briefing and arguing the motions in this case though Attorney Aguigui signed
5 off on briefs and appeared at all court hearings and most depositions as well.
6 (Girard Decl. at ¶ 17; Aguigui Decl. at ¶ 22; Declaration of Kenneth Orcutt In
7 Support of Defendants' Response to Plaintiffs' Motion ("Orcutt Decl.") at ¶ 15,
8 Docket No. 206-1; Docket Nos. 20, 50, 66, 86, 171, 194.) Both Attorneys
9 Bluestone and Tepper are 2010 law school graduates. (Girard Decl., Ex. D.)
10 Attorney Lindstrom is not included in the GG firm resume, but his requested
11 billing rate is the same as that of Attorneys Bluestone and Tepper. Therefore, the
12 Court assumes he has a similar level of experience. Law Clerk Kramer was a
13 summer associate at GG in 2011 and again in 2012. (*Id.* at 6.) The Court does not
14 question the ability of any of these individuals but is not persuaded that a mid-
15 level associate, three junior associates, and a law student contributed experience
16 and resources that were otherwise unavailable on Guam.⁴

17 Accordingly, the Court finds that the relevant community for purposes of
18 determining a reasonable hourly rate is Guam.

19 **b. Hourly Rate**

20 The rates awarded Plaintiffs' counsel must be in line with those traditionally
21 received from paying clients, and should not be lower than those customarily paid
22 to private practitioners. *Campbell v. Cook*, 706 F.2d 1084, 1087 (10th Cir. 1983)
23 (citing *Dennis v. Chang*, 611 F.2d 1302 (9th Cir. 1980)). The attorney's
24 customary rate is thus a reasonable starting point for determining the appropriate
25 hourly rate. *See, e.g., Hadix v. Johnson*, 65 F.3d 532, 536 (6th Cir. 1995) (well-
26 defined billing rates can be used to help calculate a reasonable rate for a fee

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28 ⁴ In contrast, the senior attorney who billed the most time on this case is Attorney Aguigui
of LAP, who reports 1,791.2 hours spent on this case. (Aguigui Decl. at 7.)

1 award); *Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d
2 414, 422 (3d Cir. 1993) (“prevailing market rate can often be calculated based on
3 a firm’s normal billing rate because, in most cases, billing rates reflect market
4 rates”); *Parrish v. Sollecito*, 280 F. Supp. 2d 145, 169-70 (S.D.N.Y. 2003)
5 (citations omitted).

6 **Lujan, Aguigui, & Perez LLP.** LAP seeks \$350.00 per hour for both
7 Attorneys Lujan and Aguigui. Attorney Lujan has practiced law for over thirty
8 years and has conducted over three hundred trials over the course of his career.
9 (Aguigui Decl. at ¶ 24, Ex. 1.) Attorney Lujan has also served as a Judge *Pro Tem*
10 for the Superior Court of Guam. (*Id.*) Attorney Aguigui has practiced law for
11 sixteen years and has served in a number of Guam government positions,
12 including as Chief Legal Counsel of the Office of the Governor. (*Id.*) LAP also
13 seeks \$100.00 per hour for Paralegal Topasna and \$125.00 per hour for Paralegal
14 Brooks. (Aguigui Decl. at ¶ 24.) Paralegal Topasna has eighteen years of
15 experience and Paralegal Brooks, who has also earned a law degree, has forty-five
16 years of experience. In support of its requested rates, LAP has provided a detailed
17 declaration from Attorney Aguigui explaining each individual’s role and
18 responsibilities on this litigation and attaching a brief biography for each attorney.
19 The Aguigui Declaration states that the requested rates “fall within the range of
20 fees . . . charge[d] clients in hourly rate matters.” (Aguigui Decl. at ¶ 47.)

21 Defendants argue that Attorneys Lujan and Aguigui’s hourly rates should
22 be reduced to \$250 per hour. (Orcutt Decl. at ¶ 7.) Defense counsel further
23 argues that Paralegals Topasna and Brooks’ hourly rates should be denied
24 altogether because Paralegal Topasna performed tasks more appropriate to a legal
25 secretary and Paralegal Brooks requested a lower hourly rate for contemporaneous
26 work in another case. (Orcutt Decl. at ¶¶ 18-19.)

27 First, neither of the exhibits submitted by Defendants in support of reducing
28 Attorneys Lujan and Aguigui’s rates is persuasive. Defendants submit (1) a

1 Decision and Order granting attorney’s fees to LAP for work done from 2008 to
2 2010 and (2) a 2011 fee request (for work done in 2009) by a third-party Guam
3 attorney in support of their argument that \$250 rather than \$350 per hour is a
4 reasonable rate for both Attorneys Lujan and Aguigui. (Orcutt Decl., Exs. A, B.)
5 The Decision and Order awarded fees to Attorney Lujan at the rate of \$275 per
6 hour for work done in 2009. *See also Santos v. Camacho*, Civ. No. 04-00006,
7 2008 WL 8602098 (D. Guam Apr. 23, 2008) *aff’d sub nom. Simpao v. Gov’t of*
8 *Guam*, 369 F. App’x 837 (9th Cir. 2010) (finding that declarations submitted in
9 2008 by three Guam law firms established a range for experienced partners from
10 approximately \$200/hour to a high of \$325/hour). That another experienced
11 Guam attorney billed \$250 per hour during the same period does not “challeng[e]
12 the accuracy and reasonableness of the . . . facts asserted by [Plaintiffs’ counsel].”
13 (*Camacho*, 523 F.3d at 980; Orcutt Decl., Ex. A.) The Ninth Circuit has warned
14 that “a district court abuses its discretion to the extent it relies on cases decided
15 years before the attorneys actually rendered their services.” *Camacho*, 523 F.3d at
16 981. Having considered the experience and education of Attorneys Lujan and
17 Aguigui, and in the absence of any contrary evidence, the Court finds that the
18 requested rate of \$350 per hour for Attorneys Lujan and Aguigui is reasonable.

19 Second, neither Exhibits H nor I submitted by Defendants supports
20 eliminating the fees claimed by Paralegals Topasna and Brooks, but Exhibit I
21 supports reducing the hourly rate for Paralegal Brooks. The Supreme Court held
22 in *Missouri v. Jenkins by Agyei* that the phrase “reasonable attorneys fee” for
23 purposes of 42 U.S.C. § 1988 refers to a “reasonable fee for the work product of
24 an attorney,” including the work of “secretaries, messengers, librarians, janitors,
25 and others whose labor contributes to the work product for which an attorney bills
26 her client.” 491 U.S. 274, 285, 109 S. Ct. 2463, 2470, 105 L. Ed. 2d 229 (1989).
27 The Ninth Circuit has interpreted *Jenkins* to mean that “reasonable attorney’s fees’
28 include litigation expenses . . . when it is ‘the prevailing practice in a given

1 community’ for lawyers to bill those costs separate from their hourly rates.”
2 *Grove v. Wells Fargo Fin. California, Inc.*, 606 F.3d 577, 580 (9th Cir. 2010)
3 (citations omitted). Exhibit H, consisting of several emails from Paralegal
4 Topasna sent from mid-May to early-July 2012, is irrelevant to the question of
5 whether it is the prevailing practice in Guam to bill paralegal time separately.
6 (Orcutt Decl., Ex. H.) Exhibit I actually supports awarding paralegal fees in this
7 matter because it reflects that Paralegal Brooks was also billed separately for work
8 done in 2012 on another case, albeit at a lower hourly rate of \$100.00. (Orcutt
9 Decl., Ex. I.) LAP has not explained this discrepancy in its Reply. Accordingly,
10 the Court finds that a rate of \$100.00 per hour for Paralegals Topasna and Brooks
11 is reasonable.

12 **Girard Gibbs LLP.** Having determined that the relevant community for
13 determining a reasonable hourly rate is Guam, the Court must now determine
14 reasonable hourly rates for each of the attorneys and staff of GG who billed time
15 on this case. Defendants argue that Attorneys Girard, Steiner, Hughes, Munroe,
16 and Stein should be compensated at an hourly rate of \$250.00. (Orcutt Decl. at ¶
17 7.) Defendants further argue that the more junior GG Attorneys—Lindstrom,
18 Bluestone, and Tepper—should be compensated at an hourly rate of \$100.00.
19 Finally, Defendants argue that GG litigation assistants should not be compensated.
20 (Orcutt Decl. at ¶ 9.) Defendants do not submit any evidence in support of their
21 arguments, merely attaching a billing statement from a Guam attorney who
22 graduated law school in 2000 and who charges \$150.00 per hour for her time.
23 (Orcutt Decl. at ¶ 8, Exs. C, D.)

24 The Court finds that a rate of \$350.00 per hour, commensurate with that
25 awarded to senior Guam attorneys, is reasonable for Attorneys Girard, Steiner,
26 Hughes, Munroe and Stein, and a rate of \$150.00 per hour for the junior Attorneys
27 Lindstrom, Bluestone, and Tepper is reasonable. (*See* Aguigui Decl., Ex. A;
28 Orcutt Decl., Exs. A (LAP associate Delia S. Lujan Wolff, a 2003 law school

1 graduate, charged \$150.00 per hour in 2009), C, D; *Santos*, 2008 WL 8602098
2 (finding a requested rate of \$150/hour to be reasonable for associates of a Guam
3 firm in 2008.) The Court further finds that \$100 per hour is a reasonable rate for
4 GG litigation assistants and summer Law Clerk Kramer.

5 In sum, the Court finds the following rates to be reasonable for each of
6 Plaintiffs' counsel.

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Name	Position	Graduated Law School	Requested Billing Rate	Approved Billing Rate
David J. Lujan	Partner	1979	\$350	\$350
Daniel Girard	Partner	1984	\$795	\$350
Amanda Steiner	Partner	1997	\$595	\$350
Ignacio C. Aguigui	Partner	1997	\$350	\$350
Dylan Hughes	Partner	2000	\$545	\$350
Geoffrey Munroe	Associate	2003	\$535	\$350
David Stein	Associate	2007	\$420	\$350
Eric Lindstrom	Associate	Not listed	\$330	\$150
Gabriel Bluestone	Associate	2010	\$330	\$150
Lesley Tepper	Associate	2010	\$330	\$150
Elizabeth Kramer	Law Clerk	Not listed	\$200	\$100
Unnamed Litigation Assistants			\$150	\$100
Edna M. Topasna	Paralegal		\$100	\$100
James S. Brooks	Paralegal		\$125	\$100

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19 **B. *Kerr* Factors**

20 The lodestar is presumed to be a reasonable fee but it may be adjusted in
21 “rare circumstances” by considering any of the twelve factors articulated in *Kerr*,
22 to the extent these factors have not been subsumed in the lodestar calculation. *See*
23 *Perdue*, 130 S. Ct. at 1673 (“[T]here is a ‘strong presumption’ that the lodestar
24 figure is reasonable, but that presumption may be overcome in [certain] rare
25 circumstances.”) (citations omitted). *Kerr* factors which generally may not be
26 used as a ground for lodestar adjustment include “the novelty and complexity of a
27 case because these factors ‘presumably [are] fully reflected in the number of
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1 billable hours recorded by counsel. . . . [T]he quality of an attorney’s performance
2 [also] generally should not be used to adjust the lodestar ‘[b]ecause considerations
3 concerning the quality of a prevailing party’s counsel’s representation normally
4 are reflected in the reasonable hourly rate.’” *Id.* That a representation was
5 undertaken on a contingency basis, without more, is also not a permissible basis to
6 adjust the lodestar. *See City of Burlington v. Dague*, 505 U.S. 557, 566, 112 S. Ct.
7 2638, 2643, 120 L. Ed. 2d 449 (1992) (rejecting contingency enhancement).

8 Counsel seeking an adjustment of the lodestar figure bears the burden of
9 showing by “specific evidence on the record that receipt of a reasonable hourly
10 rate times the number of hours reasonably spent on these matters does not
11 constitute a fully compensatory fee.” *Jordan v. Multnomah Cnty.*, 815 F.2d 1258,
12 1264 (9th Cir. 1987). Enhancement may be appropriate where counsel provides
13 specific evidence that her performance required an “extraordinary outlay of
14 expenses and the litigation is exceptionally protracted”; where there is an
15 “exceptional delay in the payment of fees”; or if the hourly rate does not reflect
16 the attorney’s true market value, such as when “the ‘hourly rate is determined by a
17 formula that takes into account only a single factor (such as years since admission
18 to the bar).” *Perdue*, 130 S. Ct. at 1674-75 (citing as an example *Salazar v.*
19 *District of Columbia*, 123 F. Supp. 2d 8 (D.D.C. 2000)). Plaintiffs argue that the
20 last factor justifies an upward adjustment here, but fail to present any specific
21 evidence with regard to this factor or any other. *See Perdue*, 130 S. Ct. at 1673
22 (“An enhancement must be based on ‘evidence that enhancement was necessary to
23 provide fair and reasonable compensation’”) (citing *Dague*, 505 U.S. at 899, 901).
24 This case is not like the *Salazar* case where the court determined a reasonable rate
25 by reference to a Consumer Price Index-modified variation on the “*Laffey* matrix
26 [which] presented a grid which established hourly rates for lawyers of differing
27 levels of experience during [a specific] period.” *Salazar*, 123 F. Supp. 2d at 13.
28 This Court has not used the *Laffey* matrix to determine reasonable hourly rates nor

1 any similarly rigid reference.

2 To the extent that Plaintiffs intend to argue that calculating a lodestar with
3 an hourly rate lower than that requested is by definition a failure to consider their
4 “true market value,” they do not cite any authority to support such a proposition
5 and the Court has found none. The Court determined a reasonable hourly rate for
6 this District. Plaintiffs were obligated to present evidence in support of their
7 argument that out-of-District rates should instead be used. *See supra* at 6-8; *see*
8 *also Schwarz*, 73 F.3d at 907. Having failed to do so, the *Kerr*-factor adjustment
9 analysis is not an appropriate place to revisit the Court’s initial lodestar
10 calculation. *See, e.g., Sierra Club v. U.S. Env’tl. Prot. Agency*, 339 F. App’x 678,
11 679 (9th Cir. 2009) (“The forum rule is not a perfectly precise instrument and
12 sometimes does, as predicted at the time of its adoption, ‘undercompensate certain
13 attorneys and overcompensate others.’”); *Gates v. Rowland*, 39 F.3d 1439, 1449
14 (9th Cir. 1994) (affirming district court’s determination that San Francisco rates
15 were not necessary where the justification of complex, specialized knowledge and
16 experience did not apply); *Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th
17 Cir. 1996) *opinion amended on denial of reh’g*, 108 F.3d 981 (9th Cir. 1997) (“the
18 district court . . . adjust[s] the presumptively reasonable lodestar figure on the
19 basis of the *Kerr* factors that are not already subsumed in the initial lodestar
20 calculation”).

21 Accordingly, the Court finds that none of the “rare circumstances”
22 justifying a lodestar enhancement are present in this case.

23 **C. Costs**

24 Plaintiffs also seek costs. The Local Rules of this Court provide that
25 “[w]ithin eleven (11) days after the entry of a judgment allowing costs, the
26 prevailing party shall serve on the attorney for the adverse party and file with the
27 clerk an application for the taxation of costs.” LR 54.1. The Local Rules further
28 provide that “[a] failure to comply with this Rule waives the right to recover all

1 costs, other than the clerk's costs, which may be inserted in the judgment without
 2 application." *Id.* This Court's January 30, 2013 Permanent Injunction and Final
 3 Judgment extended the time limits provided in LR 54.1 by allowing Plaintiffs
 4 fourteen days to seek both costs and attorney's fees. [Docket No. 197.] The
 5 Court's January 30 Final Judgment was not intended, however, to substitute the
 6 Court's judgment on costs for that of the clerk in the first instance.

7 Accordingly, if Plaintiffs wish to recover their costs, then they must file an
 8 application for the taxation of costs with the clerk of this Court no later than
 9 eleven days after the date of this Order.

10 **D. The Court's Fee Calculation**

11 **Girard Gibbs LLP**

Name	Reasonable Hours	Reasonable Hourly Rate	Lodestar
Daniel Girard	389.70	\$350	\$136,395
Amanda Steiner	222.40	\$350	\$77,840
Dylan Hughes	83.55	\$350	\$29,242.5
Geoffrey Munroe	168.05	\$350	\$58,817.5
David Stein	1602.50	\$350	\$560,875
Eric Lindstrom	108.20	\$150	\$16,230
Gabriel Bluestone	131.70	\$150	\$19,755
Lesley Tepper	21.00	\$150	\$3,150
Elizabeth Kramer	485.15	\$100	\$48,515
Unnamed Litigation Assistants	125.55	\$100	\$12,555
Total			\$963,375

21 **Lujan, Aguigui & Perez LLP**

Name	Reasonable Hours	Reasonable Hourly Rate	Adjustment	Lodestar
David J. Lujan	144.8	\$350	None	\$50,680
Ignacio C. Aguigui	1791.2	\$350	None	\$626,920
Edna M. Topasna	528.9	\$100	None	\$52,890
James S. Brooks	37.8	\$125	\$100	\$3,750
Total				\$734,240

IV. CONCLUSION

1 Accordingly, the Court **GRANTS IN PART** Plaintiffs’ Motion for an
2 Award of Attorney’s Fees and Costs and awards the law firm of Lujan, Aguiqui &
3 Perez LLP fees in the total amount of **\$734,240.00**. The Court further awards the
4 law firm of Girard Gibbs LLP fees in the total amount of **\$963,375.00**. The Court
5 refers the balance of Plaintiffs’ Motion requesting costs to the clerk of Court
6 pursuant to Local Rule 54.1. Plaintiffs must apply to the clerk of Court for
7 taxation of costs no later than eleven days from the date of this Order.

8 **IT IS SO ORDERED.**

9 DATED: December 2, 2013



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11 **CONSUELO B. MARSHALL**
12 **UNITED STATES DISTRICT JUDGE**
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