SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

LADONNA YUMORI KAKU, et al., Plaintiffs, vs. CITY OF SANTA CLARA; and DOES 1 to 50, inclusive, Defendants.	Case No. 17CV319862 **TENTATIVE RULING RE: MOTION FOR ATTORNEYS' FEES**

The above-entitled matter came on regularly for hearing on Friday, January 4, 2019, at 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding. After listening to arguments made by counsel, the Court continued the hearing to January 22, 2019 at 9:00 a.m. and requested supplemental briefing. The Court now issues its tentative ruling as follows:

I. INTRODUCTION

Plaintiffs alleged that defendant City of Santa Clara's (the "City") at-large method of election violated the California Voting Rights Act ("CVRA"). This action was tried in two phases – liability and remedies. In the liability phase of trial, the Court found Plaintiffs proved by a preponderance of the evidence that the at-large method of election used by the City impaired the ability of Asians to elect candidates as a result of the dilution and abridgment of

their voting rights. In the remedies phase, the Court ordered that six city council members be elected in district-based elections, and the mayor be elected in an at-large election. Plaintiffs are entitled to recover attorneys' fees and costs as permitted under applicable law.

Before the Court is Plaintiffs' motion for attorneys' fees. Plaintiffs seek recovery of fees their attorneys and paralegals have incurred in pursuing Plaintiffs' claims. In particular, Plaintiffs assert their attorneys and paralegals have spent 4,672.35 hours working on the case. (Corrected Declaration of Anne Bellows in Support of Plaintiffs' Supplemental Brief ("Bellows Decl."), Ex. C.) Plaintiffs then delete certain time entries and apply an across-the-board reduction of five percent of the time billed. Plaintiffs then multiply the remaining 4,189.55 hours by the hourly rates of attorneys and paralegals. This results in an attorneys' fees "lodestar" of $2,524,201.06. Plaintiffs then argue that the skill of counsel, the significant contingency risk, the preclusion of other employment, and the success in vindicating the voting rights of Asian voters compels an enhanced recovery – something that California law calls a "multiplier" – of 1.8 times the lodestar amount, excluding post-judgment work. Based on these calculations, Plaintiffs seek an attorneys' fee award of $4,239,055.75.

The City objects to the attorneys' fees requested by Plaintiffs. The City argues that Plaintiffs are seeking recovery for fees for "blatant overstaffing at all levels, as well as inefficient and duplicative staff utilization" including the "overuse of partner time in this case." (Defendant's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs ("Opp."), at 7.) The City also contends that the "unjustifiable multiplier, inefficient overstaffing and excessive hourly rates, taken together, would result in an improper windfall for Plaintiffs." (*Ibid.*) The reasonable fee for the work of Plaintiffs' counsel, the City argues, should be no more than $1,031,007. (*Ibid.*)

II. BACKGROUND

To provide context, below the Court briefly discusses three issues: the earlier CVRA action filed against the City by Wesley Kazuo Mukoyama and other plaintiffs; Measure A, which was proposed by the City to change its election system; and the pace of this litigation.

A. The *Mukoyama* Action

On August 10, 2017, Wesley Kazuo Mukoyama, Umar Kamal, Michael Kaku, and Herminio Hernando brought an action under the CVRA challenging the City's at-large election system used to elect council members and the mayor. The case was captioned *Mukoyama v. City of Santa Clara,* Case No. 2017-1-CV-308056 (the "*Mukoyama* action"). The attorneys who filed the *Mukoyama* action are the same attorneys who filed this action, and the claims in both actions are nearly identical. The City demurred to the complaint based on the failure of the plaintiffs to comply with the notice requirements set forth in Elections Code section 10010. On December 1, 2017, the Court sustained the demurrer without leave to amend.

B. The "Santa Clara District Election and Voting Method Measure"

On March 6, 2018 the City's council members and mayor voted unanimously to place the "Santa Clara District Election and Voting Method Measure," known as Measure A, on the June 5, 2018 ballot. Measure A proposed changing the way the City's voters elect council members and the mayor. In particular, council members would be elected through two voting districts, with voters electing three council members per district. The mayor would be elected by voters throughout the City. In addition, Measure A prescribed a voting process known as "ranked choice voting" for all city candidates for office, including council members and the mayor.

Measure A did not pass. Approximately 52 percent of the votes cast were "no" and approximately 48 percent were "yes."

C. The Pace of this Litigation

This action was filed on November 30, 2017. Judgment was entered on July 24, 2018. The parties, and the Court, were mindful of the election on November 6, 2018 in which voters would elect council members. As noted in the Court's June 26, 2018 Order:

> The parties have discussed the concern that if an appropriate remedy is not selected for the November 2018 elections, those elections may be jeopardized. Just a few years ago this happened in Palmdale, California, when CVRA violations were not corrected before its 2013 elections. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 791.) There, the court enjoined Palmdale from certifying the results of its City Council elections. The Court and the parties are committed to avoiding that result here.

In other words, it was in the best interest of both sides to resolve the case quickly so that if CVRA violations were found, the voting system for the November 2018 election could be changed. Without changes, the City risked having to hold costly new elections.

III. APPLICABLE LAW

The CVRA provides that prevailing plaintiffs are entitled to receive "a reasonable attorney's fee." In particular, it states:

> In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(Elec. Code § 14030.)

The *Serrano* opinion cited in Elections Code section 14030 concerned entitlement to, and calculation of, fees that could be recovered by plaintiffs who prevailed in a case involving the constitutional requirements for funding public schools. The California Supreme Court concluded that attorneys' fees could be recovered under the "private attorney general" doctrine if:

> the litigation has resulted in the vindication of a strong or societally important public policy, that the necessary costs of securing this result transcend the individual plaintiff's pecuniary interest to an extent requiring subsidization, and that a substantial number of persons stand to benefit from the decision. . . .

(*Serrano v. Priest, supra,* 20 Cal.3d at p. 45.)

To calculate recoverable attorneys' fees, *Serrano* first requires "a careful compilation of the time spent and reasonable hourly compensation of each attorney. . . ." (*Serrano v. Priest, supra,* 20 Cal.3d at p. 48.) This calculation is known as the "lodestar." The lodestar is then subject to augmentation or diminution based on a number of factors:

> (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately fall upon the taxpayers; (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing law

> suits of the character here involved; (6) the fact that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed; and (7) the fact that in the court's view the two law firms involved had approximately an equal share in the success of the litigation.

(*Id.* at p. 49.)

The prevailing party bears the burden of proving entitlement to an award of attorneys' fees with evidence showing reasonable amounts of time and reasonable hourly rates and evidence relating to the *Serrano* factors. The trial court must first decide if the amount of time and hourly rates are reasonable and then it must weigh the *Serrano* factors to arrive at a final award. "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court." (*Rey v. Madera United School Dist.* (2012) 203 Cal.App.4th 1223, 1240.) The California Supreme Court has stated that "[t]he experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." (*Serrano v. Priest, supra,* 20 Cal.3d at 49, citations omitted.)

IV. DISCUSSION

The City does not dispute that Plaintiffs are prevailing parties and are entitled to attorneys' fees. The City vigorously objects, however, to the amount requested. The Court therefore has the initial task of determining whether the hours worked, and hourly rates charged, by Plaintiffs' attorneys and paralegals are reasonable. After that, it must decide if a multiplier should be applied.

A. Evidence Submitted by the Parties

Plaintiffs submitted the Declaration of Morris J. Baller in Support of Plaintiff's Motion for an Award of Reasonable Attorney Fees ("Baller Decl.") with their initial moving papers. It provides a summary of the issues raised in the case, the number of hours worked by the attorneys and paralegals, billing rates, the attorneys' qualifications, and several ways in which the billing entries can be categorized. Plaintiffs also submitted declarations from their other attorneys – Robert Rubin and Richard Konda – who summarized their qualifications and experience, and also described their respective roles in this litigation. In addition, Plaintiffs submitted the

Declaration of Richard M. Pearl in Support of Plaintiff's Motion for an Award of Reasonable Attorney Fees ("Pearl Decl."). Mr. Pearl is an expert witness who provides opinions on whether the Plaintiffs' attorneys billing rates and amounts of time are reasonable and whether or not a multiplier should be applied to Plaintiffs' lodestar.[1] With their reply brief Plaintiffs submitted supplemental declarations from Messrs. Baller, Rubin and Konda. They also submitted a declaration from Kevin Shenkman, an attorney who has worked on other CVRA cases. At the request of the Court, Plaintiffs later submitted the Bellows declaration cited above.

In opposing the motion, the City submitted the declaration of Steven G. Churchwell regarding developments in both this case and the *Mukoyama* action. (Declaration of Steven G. Churchwell in Support of Defendant's Opposition to Motion for Attorney's Fees and Costs ("Churchwell Decl.").) The City also submitted the declarations of two experts on attorneys' fees, John O'Connor and Brand Cooper. (See Declaration of John O'Connor in Support of Defendant's Opposition to Motion for Attorney's Fees and Costs ("O'Connor Decl.) and Declaration of Brand Cooper in Support of Defendant's Opposition to Motion for Attorney's Fees and Costs ("Cooper Decl.").) The City later submitted the Declaration of Vincent M. Vu in Support of Defendant's Supplemental Opposition to Motion for Attorney's Fees ("Vu Decl.").

All of the timesheets showing the time spent, and rates charged, by Plaintiffs' attorneys and paralegals are attached to the Churchwell Declaration, Ex. F, the Supplemental Declaration of Morris J. Baller in Support of Plaintiff's Motion for an Award of Reasonable Attorney Fees ("Supp. Baller Decl."), Ex. 6, and the Bellows Decl., Ex. A.

B. Plaintiffs' Lodestar

As previously discussed, "In determining a reasonable attorney fee award under fee-shifting statutes, the trial court begins by calculating a lodestar figure based on the hours reasonably spent and the prevailing hourly rate for private attorneys in the community conducting litigation of the same type." (*Rey v. Madera United School Dist., supra,* 203 Cal.App.4th at p. 1240.) Below the Court evaluates in evidence submitted for and against Plaintiffs' lodestar.

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[1] Plaintiffs also submitted a short declaration from an attorney named Michael Jacobs.

1. The Number of Hours Worked

An attorney fee award should include compensation for all hours reasonably spent. (*Rey v. Madera United School Dist., supra,* 203 Cal.App.4th at p. 1243.) "A plaintiff is not automatically entitled to all hours claimed in the fee request. Rather, the plaintiff must prove the hours sought were reasonable and necessary." (*Id.* at 1243-44, citing *El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337.)

Plaintiffs initially submitted evidence showing 4004.50 hours of work by their attorneys and paralegals. (Baller Decl., Exh. 4.) This total did not include time spent in 2011 and 2012 in connection with sending CVRA demand letters to the City, and more recent work that junior staff spent on work not directly tied to their principal assignments. (*Id.* at ¶ 84.) To account for "any potential residual inefficiencies" Plaintiffs applied a five percent across-the-board reduction, which reduced the fees by $121,000. The remaining time for which Plaintiffs' motion sought compensation was 3803.85 hours.

On reply Plaintiffs submitted evidence showing they spent an additional 315.75 hours preparing the motions seeking attorneys' fees and costs, resulting in additional fees of $173,820.55. (Supp. Baller Decl., Ex. 8.) Plaintiffs do not seek any multiplier for this work.

At the January 4, 2019 hearing the Court requested that Plaintiffs clarify how they calculated the number of hours for which they seek compensation. The Court also requested that Plaintiffs submit any additional billing records showing time spent working on post-judgment matters. Plaintiffs complied with this request. (Bellows Decl., Ex. C.) The final tally of hours shows Plaintiffs' attorneys and paralegals spent 4,672.35 hours working on this case. Plaintiffs then exercised "billing judgment" and deleted entries for 262.3 hours of their time. Plaintiffs then reduced the remaining number of hours by five percent to account for "any potential residual redundancies." (Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Award of Reasonable Attorneys' Fees ("Plts. Memo."), at 6.) This results in 4,189.55 hours which Plaintiffs argue should be used in the lodestar. (Bellows Decl., Ex. C.)

The City argues Plaintiffs are not entitled to recover all of their fees. They argue that time recorded by Plaintiffs' attorneys and paralegals is not compensable, including time in the

following categories: (1) time spent on the *Mukoyama* action; (2) time spent on Plaintiffs' motion for preliminary injunction; (3) vague and redacted time descriptions; (4) time spent on political and media activities; (5) administrative time; and (6) excess time spent because of overstaffing and inefficiencies. (Opp. at 10-18.) The City's experts reviewed Plaintiffs bills and identified suspect entries. They then grouped the entries that are shown on tables attached to Mr. Cooper's declaration. The City then argues that amounts Plaintiffs seek in each group of suspect entries cannot be recovered.[2]

a. Time Spent on the *Mukoyama* Action

The City states: "The Court dismissed the *Mukoyama* action without leave to amend because Plaintiffs failed to comply with the simple pre-filing procedures in Elections Code section 10010." (Opp. at 11.) The City argues that time spent on unsuccessful or unrelated claims may be excluded from the lodestar. (Opp. at 12, citing *Hensley v. Eckerhart* (1983) 461 U.S. 424, 440.) The City also argues that a reduced fee award is appropriate when the prevailing party achieves partial success. (*Id.,* citing *Rey, supra,* 203 Cal.App.4th at p. 1239.) More broadly, the city argues that "Plaintiffs' futile efforts in litigating the doomed *Mukoyama* action and opposing the demurrer were predictably unreasonable, unsuccessful, and unrelated to their success" in this action. (*Id.*)

The attorneys representing the plaintiffs in the *Mukoyama* action are the same as those in this action. The complaint filed in this action repeats the claims in the *Mukoyama* action. It makes sense to the Court that the time spent on foundational work in the *Mukoyama* action that was reused in this action can be recovered. The Court agrees with the City, however, that the time spent on the demurrer in the *Mukoyama* action did nothing to advance the issues raised in this action. As noted in the Court's order sustaining the City's demurer, "Plaintiffs have not alleged compliance with the notice provision in Elections Code section 10010. Plaintiffs do not assert in their papers that proper notice was sent on or after January 1, 2017 and at least 45 days prior to filing the Complaint, and they do not argue that such an allegation could be added to an

[2] Many entries appear in more than one group. In assessing whether the entries represent reasonable work, the Court has been careful not to double-count entries since that would increase the amounts deducted for unreasonable work.

amended pleading." For these reasons, the demurrer was sustained without leave to amend. In this action, Plaintiffs addressed the notice deficiencies flagged in the *Mukoyama* action and thus this action moved forward to trial.

The Court finds Plaintiffs' work related to the demurrer filed in the *Mukoyama* action cannot be recovered. That work did nothing to advance the substantive issues in this action. After reviewing the contested time entries, the Court will strike $77,300 of time relating to the preparation of the demurrer. The fees incurred for other work in the *Mukoyama* action can be recovered including initial client meetings, factual research, and legal research unrelated to the issues raised by the demurrer.

b. Plaintiffs' Preliminary Injunction Motion

The City's Opposition brief states: "On July 16, 2018, at or around 5:00 p.m., a day and half before the remedies phase hearing was set to begin, Plaintiffs filed a motion for preliminary injunction to enjoin the City from conducting further at-large elections for City Council." (Opp. at 13.) The City argues that filing for a preliminary injunction was "patently unreasonable" and procedurally infirm. (*Ibid.*) The City concludes: "Plaintiffs should not be rewarded for improper litigation tactics and filing late motions on the eve of trial." (*Ibid.*) The City's expert calculated that the fees associated with the preliminary injunction motion totaled approximately $71,000. (Cooper Decl., Ex. J.) In response, Plaintiffs argue, "The brief served the same function as a trial brief and was intended to provide guidance to the Court in shaping injunctive relief that could be immediately implemented." (Reply at 4.)

The Court agrees with the City that it was somewhat bizarre for Plaintiffs to submit a motion for preliminary injunction on the eve of the remedies trial. The Court agrees, however, that the content of the preliminary injunction motion matched up with many of the issues presented at the remedies trial. Moreover, the City provided a trial brief of similar length with similar content. There were, however, some unique tasks associated with the motion for preliminary injunction that would have been unnecessary for a trial brief. Time was spent preparing Jose Moreno's declaration when, in fact, he was a testifying witness at trial. The declaration of Ginger Grimes that accompanied the preliminary injunction too was unnecessary.

There were also boilerplate sections on law pertaining only to preliminary injunction motions. After reviewing all of the contested time entries, the Court will strike $2750 of time relating to the motion for preliminary injunction.

c. Vague and Redacted Time Descriptions

The City highlights time entries it asserts are vague. (Cooper Decl., Ex. M.) They account for approximately $73,000 in fees. (*Ibid.*) The City argues that "[v]ague billing entries should be reduced because such entries may obscure the nature of the work claimed and inflate the amount of non-compensable hours." (Opp. at 13.) The City argues that other entries, totaling approximately $32,000, are obscured by redactions. (Cooper Decl., Ex. O.) It argues that while some redactions may be necessary to protect various privileges, redactions that "include the names of individuals" go beyond any recognized privilege. (Opp. at 14.)

In response, Plaintiffs argue that specific time entries are not required; that California courts allow attorneys' fees to be recovered on the basis of declarations that summarize attorney tasks. (Reply at 7.) Plaintiffs state that "task codes" shown in their bills show "the nature of the underlying work." (Reply at 8.) Plaintiffs state that redactions are entirely appropriate. Finally, Plaintiffs provide more information about these entries with their reply brief. (Baller Supp. Decl., Ex. 2.)

With hundreds of pages of billing records, it is not surprising the City's expert identified vague time entries. When they are presented as a separate list some appear vague, such as: "PC with Wes M."; "Add to memo"; "meeting with clients"; "email to Alex M."; "Meeting over lunch"; and "Signature collection." Many of these entries better understood, however, when they are alongside contemporaneous billing entries, and many are for small amounts of time (e.g., 0.10 or 0.20 of an hour of time. The City's expert lists other entries that are sufficiently specific, including "review and respond to Court and Churchwell memos re sequencing"; "Review/edit 5/10 mtg agenda"; and "Confer with G. Grimes re: mootness, legal strategy, and campaign issues." The City's expert lists entries regarding "calls with counsel." The expert does not state that such entries may concern attorney-client communications or other privileged matters that cannot be disclosed without violating the California Rules of Professional Responsibility.

Based on its review of the entries identified as vague or redacted, and being mindful of the Plaintiffs' challenge of meeting their burden of proof without disclosing privileged information, the Court will strike $7850 of time.

d. Political and Media Activities

In this lawsuit Plaintiffs challenged the City's use of city-wide elections for each council member and the mayor. As noted above, on March 6, 2018 the Santa Clara City Council voted unanimously to place Measure A on the June 5, 2018 ballot. Had Measure A passed, it too would have changed the City's use of city-wide elections for each council member (though the mayor would still be elected city-wide). In particular, council members would be elected through two voting districts, with voters electing three council members per district.

The City's expert contends that Plaintiffs' counsel incurred approximately $50,000 in fees participating in political activities to oppose Measure A. (Cooper Decl., Ex. L.) The City's expert contends an additional $14,000 of time was spent on media activities. Citing *Crawford v. Board of Education* (1988) 200 Cal.App.3d 1397, 1408, the City argues that lobbying and political activities are not generally compensable under California law. (Opp. at 15.) That case states: "As we see it, the private attorney general doctrine limits awards of fees to litigants who successfully utilize the judicial process to achieve their aims. The doctrine simply does not, nor should it, encompass successful lobbying efforts by those who seek to influence the Legislature or the electorate on any particular issue." (*Ibid.*) Citing *Godinez v. Schwarzenegger* (1995) 132 Cal.App.4th 73, 93, the City acknowledges that a Court can award attorneys' fees for certain political activities if the success of those activities is causally connected or triggered by the litigation. But the City argues nothing like that happened here. It states: "In the instant case, Plaintiffs engaged in political activity concurrently with the litigation, before any court ordered remedy. Their political activities were not necessary to effectuate any court order or remedy." (Defendant's Supplemental Briefing in Opposition to Plaintiffs' Motion for Attorneys' Fees ("Dft. Supp."), at 8).

Plaintiffs state that neither *Crawford* nor *Godinez* "has any bearing here." (Reply at 3.) They assert: "Plaintiffs unquestionably vindicated their voting rights in court and are seeking

compensation for political and media work intimately connected with the litigation which contributed to its successful outcome." (*Ibid.*) Plaintiffs rely on federal authorities for the proposition that political and media work "intimately related to the successful representation of a client." (Plts. Memo. at 10, citing *Davis v. City & County of San Francisco* (9th Cir. 1992) 976 F.2d 1536, 1545.) Plaintiffs further argue that "[p]reventing Measure A's implementation was one of Plaintiff's core litigation goals." (*Id.* at 11.)

One problem with Plaintiffs' argument is that Measure A was never litigated; it was not a "core litigation goal" because it was never before this Court. Had it been, Plaintiffs stated consistently it would have violated the CVRA. That issue, however, was not litigated. This Court recognizes that Plaintiffs did present legal arguments related to "the City's two multimember district plans" at the remedies trial, but that was after Measure A was defeated and is not the type of "political activity" the City is challenging. Another problem is that unlike other cases cited by Plaintiffs, including *Jenkins by Agyei v. State of Missouri,* 862 F.2d 677 (8th Cir. 1988), this is not a situation where the Plaintiffs scored an early victory and subsequent legislative changes allowed a party to accomplish their litigation goals without further court action.

Many billing entries highlighted by the City's expert did not, however, relate to Measure A. Some concern legal analyses of strategic voting by minorities. Some concern consulting with experts regarding remedies. Some concern public meetings on district-based elections that were required under California law. And some concern the review of federal cases on alternative voting systems. Time for those activities should not be excluded.

Other entries, however, are clearly political and cannot be recovered under any theory. Examples include entries for "Democratic Party Meeting"; "Research South Bay Labor Council endorsements for past Santa Clara city council elections"; "SCCDA Meeting"; "Review and edit proposed facebook post opposing 2x3 system"; "Sierra Club meeting"; "Review Measure A website"; "ballot measure opposition statement"; and "Present to APA democrats on No on Measure [A]".

The Court has reviewed the Plaintiffs' billing records and finds that $47,750 of the fees involving political and media activities should be stricken.

e. Administrative Time

The City cites hornbook law that administrative time cannot be recovered. (Opp. at 17.) This is because most clerical and other overhead expenses are ordinarily embedded in an attorney's hourly rates. (*Ibid.*) It is unreasonable for attorneys to charge hundreds of dollars per hour for work that can be performed by clerical staff. The City's expert concludes that Plaintiffs' lawyers and paralegals charged $34,423.50 to perform clerical work.

Plaintiffs do not dispute the legal principles at issue. They argue, however, that the City's "categorization of such tasks . . . is vastly overbroad, encompassing many hours of work that courts have held to be compensable at attorney and paralegal hourly rates, including time spent supervising work on the case by other legal personnel, researching local rules, compiling documents and exhibits for deposition and trial. . . ." (Reply at 8.) Plaintiffs concede that $11,129.50 of the work identified by the City's expert should be withdrawn. Plaintiffs argue the rest, however, is compensable.

The Court has reviewed the disputed billing entries identified by the City's expert. Some entries concern purely clerical work that is not compensable (e.g., reviewing office supplies and collecting binders). Some entries concern activities that should be billed at a paralegal hourly rate instead of an attorney hourly rate (e.g., preparing an evidence appendix with new Bates ranges). And some entries reflect tasks appropriate for attorneys to undertake (e.g., revisions to documents filed with the court). In addition to the administrative time deducted by Plaintiffs, the Court finds that $17,125 of the requested fees cannot be recovered because they are for time spent on administrative or clerical activities, or because they were billed at an attorney, and not paralegal, hourly rates.

f. Overstaffing and Inefficiencies

The City argues that Plaintiffs' time should be reduced because the case was overstaffed, which resulted in duplicative and unnecessary hours of work. (Opp. at 10-11.) The City cites the declarations of both of its experts to support this argument. (See Cooper Decl., ¶¶ 45-47;

O'Connor Decl., ¶¶ 68-71, 77, 84-90.) Those experts express concerns about the number of attorneys attending case management conferences, depositions, and each phase of trial. They also express concerns over partners working on lower-level tasks, excessive conferencing, excessive internal communications, and other inefficiencies. Mr. Cooper argues that the court "should take no less than a 10% to 15% reduction of the fees. . . ." (Cooper Decl., ¶ 49.)

Plaintiffs argue that their staff levels were appropriate in nearly all instances. (Supp. Baller Decl., ¶¶ 3-49.) They agree, however, to reduce their request for attorneys' fees for trial attendance by Ms. Ho and Mr. Kuwada. Plaintiffs also highlight their five percent across-the-board reduction takes into account certain inefficiencies highlighted by Messrs. Cooper and O'Connor, which other courts have found sufficient. (Plts. Memo. at 7, citing *Ridgeway v. Wal-Mart Stores, Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 990-91.)

The Court finds the staffing decisions, and overall staffing structure, were reasonable. This was fast-moving litigation. It featured a greater percentage of work requiring specialized knowledge and expertise. There was less low level work than most actions because the case focused on trials, not pre-trial work such as discovery and law-and-motion practice. Mr. Cooper argues the Court should reduce the number of hours by 10 to 15 percent. On their own Plaintiffs deducted 5 percent of their fees for "any potential residual redundancies" which is similar to the reasons given by Mr. Cooper. And after all that, the Court has further reduced the fees as explained above. In sum, the Court finds that any unreasonable fees for overstaffing and other inefficiencies have already been stricken – first by the Plaintiffs themselves, and later by the Court.

g. Bills Submitted on Reply

Plaintiffs submitted additional bills from their attorneys with their reply papers. (Baller Supp. Decl., Ex. 6.) The City found entries in those bills that it argues fail to establish the time spent was reasonable. (Vu Decl., ¶¶ 2-5 & Ex. A.) The Court agrees with the City, in part, and will reduce the lodestar by an additional $2787.50.

h. Conclusion

In both anticipating, and responding to, the City's arguments that its fees were not reasonable, Plaintiffs eliminated certain line-items and imposed a five percent across-the-board cut in their fees which reduced their lodestar by $266,519.19. The Court finds the lodestar should be further reduced by $155,562.50 ($77,300 + $2750 + $7850 + $47,750 + $17,125 + $2787.50).

2. Reasonableness of the Hourly Rates Charged

Generally, in calculating the lodestar, "[t]he reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The Court must take into account the "experience, skill, and reputation of the attorney requesting fees." (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.)

Plaintiffs argue the rates charged by their attorneys and paralegals are reasonable. They provide information about the experience, skill, and reputation of their attorneys. The billing rates for attorneys range from a high of $975 per hour to a low of $375 per hour charged by less experienced attorneys. Plaintiffs note that their rates have been approved in other voting rights cases filed in both federal and state courts. Plaintiffs also provide declaration from an expert who offers an opinion that the rates charged by Plaintiffs' attorneys and paralegals are "reasonable by San Jose standards." (Pearl Decl., ¶ 40.)

The City argues the rates charged by Plaintiffs' attorneys and paralegals are far too high. The City's expert cites much lower rates charged by local law firms, and states "the best cohort for excellent San Jose litigation . . . is the prestigious firm of Hopkins & Carley" which charges at most $495 an hour for its attorneys. (O'Connor Decl., Ex. Y & ¶¶ 96, 121.) The City's expert cites a number of other data points and methodologies that suggest that the hourly rates for Plaintiffs' attorneys are unreasonably high.

The Court has a clear idea of the rates charged by local attorneys. This case was filed in a courtroom designated for complex litigation and nearly every week this Court reviews class action settlements – a legal process that requires the Court to evaluate billing rates of the attorneys who appear before it. This Court also regularly adjudicates motions in which parties are seeking to recover reasonable attorneys' fees under "prevailing party" fee provisions in

contracts. While every type of case requires different skills and sophistication, the Court is well-equipped to calibrate local rates with work comparable to litigating the CVRA issues that were tried before this Court.

Based on the evidence submitted by the parties, especially the declaration of Mr. Pearl, and based on the Court's own experience reviewing attorneys' fees, the Court finds the rates charged by Plaintiffs' attorneys and paralegals are reasonable. They are comparable to rates charged by other local attorneys with specialized skills that are necessary for litigating complex cases involving novel issues. This is not standard litigation with many choices for counsel. As the City admits, "there are [] few CVRA attorneys within California. . . ." (Dft. Supp., at 12.)

C. Lodestar Multiplier

"Once the lodestar is fixed, the court may increase or decrease that amount by applying a positive or negative 'multiplier' to take other factors into account." (*Rey v. Madera United School Dist., supra,* 203 Cal.App.4th at p. 1240.) As noted above, factors that may be considered include those listed in *Serrano.* "The trial court is not required to include a fee enhancement for exceptional skill, novelty of the questions involved, or other factors. Rather, applying a multiplier is discretionary. Further, the party seeking the fee enhancement bears the burden of proof." (*Id.* at p. 1242, citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.)

The Court finds a multiplier is warranted in this action for three reasons. First, Plaintiffs' counsel secured a complete victory. The complaint filed on November 30, 2017 sought a finding that the City's at large method of election violated the CVRA and that it be changed to district-based elections. Plaintiffs obtained the relief they requested.

Second, the legal questions at issue were both novel and difficult. The CVRA borrows, in part, from the federal Voting Rights Act of 1965 and federal case law including the seminal U.S. Supreme Court case *Thornburg v. Gingles* (1986) 478 U.S. 30, 47. The CVRA, however, has clear difference from federal law and few California cases provide guidance on how the CVRA should apply in certain circumstances. As noted in the Court's Statement of Decision for the liability phase:

> The CVRA was enacted in 2002. It has been amended several times since then. But while more than fifteen years has passed, there are only three published cases

interpreting its provisions: *Sanchez, supra,* 145 Cal.App.4th 660, *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, and *Jauregui v. City of Palmdale, supra,* 226 Cal.App.4th 781. None of these cases addressed issues in dispute here.

The CVRA claims at issue here were difficult. They involved complicated statistical techniques that can involves both bivariate and trivariate analyses to evaluate political cohesion and the occurrence of racially polarized voting.

Third, compensation for the attorneys in this case was contingent and came with significant risks. Plaintiffs incurred costs totaling approximately $200,000. Without a victory, those costs could not be recovered. Litigating this case required a substantial amount of time and commitment and would have been uncompensated had the claims not been proven. The attorneys also put their reputations at risk.

The other *Serrano* factors are a mixed bag. None add significant weight in favor of, or against, a multiplier.

Plaintiffs ask for a multiplier, or lodestar adjustment, of 1.8. The City notes that "[t]he purpose of a lodestar adjustment is to 'fix a fee at the fair market value for the particular action.'" (Opp. at 25, citing *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579.) In considering an appropriate multiplier, a court must take into account the extent to which the lodestar already encompasses contingent risk, extraordinary skill, and other factors. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) Plaintiffs' counsel have significant skills and experience that are, in turn, reflected in their hourly rates. This reduces the multiplier. Likewise, the contingent risk was lower after June 6, 2018 when the Statement of Decision on liability issues was filed, which also reduces the multiplier for fees incurred between that date and entry of judgment. Therefore, while the relevant *Serrano* factors warrant a multiplier, the Court finds that to reach a fair market value the multiplier should be 1.4 for work completed before judgment was entered on July 24, 2018, and 1.0 for later work.

D. Recovery of Costs Incurred in Seeking Attorneys' Fees

Plaintiffs seek $8712.50 in costs associated with the work of Mr. Pearl, an expert who submitted a declaration supporting the Plaintiffs' position that the hourly rates charged by its

attorneys were reasonable. Plaintiffs argue that such costs were incurred after the deadline for filing a memorandum of costs, and that the California Rules of Court and *Anthony v. City of Los Angeles* (2008) 166 Cal.App.4th 1011, 1016, permit recovery under these circumstances. The City argues that under Elections Code section 14030 expert fees must be recovered as part of the costs. The City argues that *Anthony* considered language in the Fair Employment and Housing Act which is not applicable here. The City concludes by stating the proper procedure for Plaintiffs to recover Mr. Pearl's costs is for Plaintiffs to seek leave to amend their memorandum of costs. For this proposition the City cites *Puppo v. Larosa* (1924) 194 Cal. 721, 724, which in turn cites Code of Civil Procedure section 473.

Elections Code section 14030 provides that the prevailing party is entitled to "litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs." Costs are recovered through a memorandum of costs. Plaintiffs argue that the cost of hiring Mr. Pearl for work related to their attorneys' fees came after their memorandum of costs was filed. If so, then seeking leave to amend the memorandum of costs would seem logical if it is still timely. The Court does not believe such costs can be recovered as part of an attorneys' fees motion. The request to recover those costs, therefore, is denied.

Nonetheless, the Court encourages the parties to resolve this issue on their own. Nowhere does the City offer any substantive objection to Mr. Pearl's charges. If the City is correct that Plaintiffs must file a motion seeking leave to amend the memorandum of costs, then the City may very well face a subsequent attorneys' fees motion filed by Plaintiffs that seeks to recover the cost of preparing that motion. And if the City files a motion to tax costs, it faces further exposure to an attorneys' fees claim, not to mention the cost of paying its own attorneys for the work. The City's exposure to attorneys' fees is likely to far exceed the $8712.50 in costs at issue here, so it makes sense to the Court that the parties seek a mutual accommodation.

V. DISPOSITION

Based on the foregoing, Plaintiffs' motion for attorneys' fees is GRANTED. The Court agrees with the City that fees incurred by Plaintiffs' attorneys and paralegals totaling $155,562.50 are unreasonable and cannot be recovered. The lodestar, therefore, is reduced to

$2,368,638.56. Plaintiffs requested a multiplier of 1.8. The Court finds this multiplier is too high and that a multiplier of 1.4 is reasonable. The Court therefore awards Plaintiffs $3,316,093.98 in attorneys' fees.

This tentative ruling is deemed challenged by both sides. All parties shall appear at the hearing set at 9:00 a.m. on January 22, 2019.

NOTICE: The Court does not provide court reporters for proceedings in the complex civil litigation departments. Parties may arrange for a private court reporter to provide services, but those arrangements must be consistent with the local rules and policies posted on the Court's website.