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10

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 SRI LOUISE COLES, RON SMITH, JENNIFER  
14 HANSEN, DAVE TELLES, SCOTT BOHNING,  
and LINDSAY PARKINSON, individually,

15 Plaintiffs,

16 vs.

17 CITY OF OAKLAND, et al.,

18 Defendants.

) **No. C 03-2961 TEH (JL)**

) Hon. Thelton E. Henderson

) **PLAINTIFFS' SECOND MOTION**  
) **FOR AWARD OF REASONABLE**  
) **ATTORNEYS' FEES AND COSTS**  
) **(RE: DAMAGES CLAIMS)**

19 LOCAL 10, INTERNATIONAL LONGSHORE  
20 AND WAREHOUSE UNION, et al.,

21 Plaintiffs,

22 vs.

23 CITY OF OAKLAND, et al.,

24 Defendants.

25 (No. C 03-2962 TEH (JL))

) Hearing Date: September 7, 2006  
) Time: 2:30 p.m.  
) Hon: Thelton E. Henderson

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**NOTICE OF MOTION AND MOTION**

1  
2 PLEASE TAKE NOTICE that on September 7, 2006, at 2:30 p.m., Plaintiffs Jennifer  
3 Hansen, Lindsay Parkinson, Scott Bohning, and Ron Smith, by and through their attorneys, will  
4 move this Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, for an award of  
5 reasonable attorneys' fees and costs, pursuant to 42 U.S.C. §1988, California Civil Code §§  
6 52(b)(3) and 52.1(h), and California Code of Civil Procedure § 1021.5 for their work in obtaining  
7 the settlement of Plaintiffs' remaining claims in this matter, including damages claims, pursuant to  
8 the parties' settlements requiring damages to be paid directly to them and attorney's fees and costs  
9 to be resolved separately. This motion is based on the Memorandum of Points and Authorities  
10 that follows, the declarations of Michael Haddad, Julia Sherwin, Richard M. Pearl, and James C.  
11 Sturdevant filed in support of the earlier Motion, the declarations of Michael Haddad, Julia  
12 Sherwin, Richard M. Pearl, and Michael Bien filed in support of this motion, the declarations  
13 referenced in Plaintiffs' August 29, 2005, and September 7, 2005 Notices of Reliance on  
14 Declarations Filed in Related Case (Docket Nos. 106, 111), all documents and records filed in the  
15 case, and on such further written and/or oral argument and evidence as may be submitted.  
16  
17

18 By this motion, Plaintiffs seek an award of reasonable attorneys' fees and costs in the  
19 amount of \$ 485,844.67 for work on this matter not claimed in connection with the injunctive  
20 relief settlement and related to their damages claims, and for bringing this motion.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

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 14 112 Cal.App.4<sup>th</sup> 1313 (2003) -----10  
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 20 *New York Gas Light Club, Inc. v. Carey*, 447 U.S. 54 (1980) -----10  
 21 *Newman v. Piggie Park Enterprises, supra*, 390 U.S. 400 (1968) -----8  
 22 *Notrica v. State Compensation Ins. Fund*, 70 Cal.App.4<sup>th</sup> 911,  
 23 83 Cal.Rptr.2d 89 (1999) -----12  
 24 *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002),  
 25 *aff'd* 67 Fed.Appx. 408 (9<sup>th</sup> Cir. 2003)-----24  
 26 *Perkins v. Mobile Housing Bd.*, 847 F.2d 735 (11<sup>th</sup> Cir. 1988)-----16  
 27 *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311 (1983)-----11  
 28

1 *Richard S. v. Dept. of Dev. Services*, 317 F.3d 1080 (9<sup>th</sup> Cir. 2003)-----7

2 *Riverside v. Rivera*, 477 U.S. 561 (1986)-----13

3 *Sablan v. Dept. of Finance of the Commonwealth of the Northern Mariana Islands*,

4 856 F.2d 1317 (9<sup>th</sup> Cir. 1988)-----7

5 *Salton Bay Marina v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914 (1985)-----16

6 *Schmid v. Lovette*, 154 Cal.App.3d 466 (1984)-----10

7 *State v. Meyer* (1985) 174 Cal.App.3d 1061-----24

8 *Sundance v. Municipal Court*, 192 Cal.App.3d 268,

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10 *Teitelbaum v. Sorenson*, 648 F.2d 1248 (9<sup>th</sup> Cir. 1981) -----8

11 *Thomas v. City of Tacoma*, 410 F.3d 644 (9<sup>th</sup> Cir. 2005) -----8

12 *United States v. City & County of San Francisco*, 748 F.Supp. 1416 (N.D. Cal. 1990),

13 *aff'd sub nom Davis v. City & County of San Francisco*, 972 F.2d 1536

14 (9<sup>th</sup> Cir. 1992)-----17

15 *United Steelworkers v. Phelps Dodge Corp.*, 896 F.2d 403 (9<sup>th</sup> Cir. 1990)-----19

16 *Walker v. Carnival Cruise Lines*, 107 F.Supp.2d 1135 (N.D. Cal. 2000)-----25

17 *Woodland Hills Residents Assn v. City Council*, 23 Cal.3d 917 (1979)-----12

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19 **Statutes, Court Rules, and other Authorities**

20 42 U.S.C. §1988 -----passim

21 Cal. Civil Code §51.7 -----5-6

22 Cal. Civil Code §52.1-----5-6

23 Cal. Code of Civil Procedure §1021.5 -----passim

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25 *Pearl, Calif. Attorney Fee Awards, 2d ed.*, (Cal.Cont.Ed.Bar 2004) (collecting cases) -----10, 20

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1 **I. INTRODUCTION AND SUMMARY**

2 This civil rights action (“*Coles*”) was brought by Plaintiffs Sri Louise Coles, Jennifer  
3 Hansen, Dave Telles, Lindsay Parkinson, Scott Bohning, and Ron Smith against Defendants City  
4 of Oakland and numerous Oakland Police Department (OPD) command staff and officers. Four of  
5 these Plaintiffs settled their claims for separate damages amounts that “do not include Plaintiffs’  
6 costs and attorneys’ fees, which the parties agree will be resolved by motion to the Court.”  
7 Haddad 2d Supp. Decl., **Ex. F, Mediation Agreement**); Stipulation and Order for Dismissal  
8 entered 7/31/06 (Docket # 183).<sup>1</sup>

9  
10 **Ron Smith**, an independent journalist present to film the event, was shot in the hand that  
11 held his videocamera to his face as he backed away from the police and filmed them. His camera  
12 captured the trail of the 12-gauge bean bag coming from the police line and directly at him. He  
13 was shot by someone on the same team of police officers involved in the shooting of Sri Louise  
14 Coles, at the same location. His damages settlement was \$48,000, exclusive of fees and costs.

15  
16 **Scott Bohning** arrived late to the Port and did not even get to participate in the protest  
17 because he was shot five times, including once in the face, three times in the back and once in the  
18 hand, as he approached the protest along Maritime Street. His damages settlement was \$30,000  
19 exclusive of fees and costs.

20  
21 **Lindsay Parkinson** was rammed by a police motorcycle traveling at 20 mph as she tried  
22 to run to safety, leaving her with huge bruises, cuts, and a motorcycle tire mark on her leg.  
23 Eyewitness Andrea Potter stated that Ms. Parkinson presented no threat to anyone and was just  
24 running out of the way as the police officer sped up to slam into her and knock her to the ground.

25 Defendant officers then arrested Lindsay Parkinson, took her to jail where she spent the  
26

27 <sup>1</sup> Additionally, the settlements and this motion for attorneys’ fees and costs “are separate from, and do not  
28 affect plaintiffs’ claim for attorneys’ fees and costs related to the previous partial settlement of injunctive  
relief claims.” Haddad 2d Supp. Decl., **Exhibit F**.

1 night, and prompted a criminal prosecution that lasted for over a year before the charges against  
2 her were dismissed. Ms. Parkinson's damages settlement was \$31,250, excluding fees and costs.

3 **Jennifer Hansen** was struck by a police projectile in the back of her right arm as she was  
4 dispersing away from the police, while the police herded protesters north on Maritime Street, with  
5 tall fences enclosing the street. She had a large bruise on the back of her arm which resolved  
6 without medical treatment. Her damages settlement was \$10,000, excluding fees and costs.

7  
8 This motion seeks attorneys' fees and costs incurred by Ron Smith, Scott Bohning,  
9 Lindsay Parkinson, and Jennifer Hansen, pursuant to their settlement agreement, and following an  
10 unsuccessful attempt to settle those fee claims with Magistrate Judge Larson.

## 11 **II. STATEMENT OF FACTS AND PROCEEDINGS**

12 On September 27, 2005, this Court issued its Order granting in part and denying in part  
13 Plaintiffs' motion for attorneys' fees related to the injunctive relief obtained. This Court held that  
14 "Plaintiffs are entitled to attorneys' fees and costs under both federal and state law." Dkt. No.  
15 115, p. 1. That motion remains pending since the parties participated in two unsuccessful  
16 settlement conferences with Judge Larson.

17  
18 The remaining damages claims proceeded through trial preparation. As this Court noted in  
19 its September 27, 2005, Opinion, the majority of the plaintiffs in the *Local 10* case accepted Rule  
20 68 offers of judgment, with the exception of Longshore workers represented by John L. Burris,  
21 and a few of James Chanin's clients. As discussed below, five of the six *Coles* plaintiffs also  
22 rejected Defendants' Rule 68 offers of judgment.<sup>2</sup>

23  
24 In November 2005, after a year of intensive discovery, Defendants agreed to mediate  
25 Plaintiff Sri Louise Coles' claims, and indicated that they may be willing to settle the other four  
26

---

27 <sup>2</sup> Plaintiff Dave Telles accepted Defendants' Rule 68 offer of judgment for \$8,500, including his attorneys'  
28 fees and costs related to his damages, in a settlement that did not include his attorneys' fees and costs for injunctive relief. (Docket No. 152).



1 *Coles* plaintiffs' cases if Ms. Coles' claim settled. At mediation on November 28, 2005, Ms.  
2 Coles' claim settled for \$210,000, including her attorneys' fees and costs related to her damages  
3 claims. Haddad 2d Supp. Decl. ¶ 16.

4 At a separate mediation held on December 14, 2005, Defendants settled the remaining  
5 damages claims of the last four *Coles* Plaintiffs ("Ron Smith, et. al.") for damages amounts *not*  
6 *including* attorneys' fees and costs, which the parties agreed "will be resolved by motion to the  
7 Court." (Haddad 2d Supp. Decl., **Ex. F**, Mediation Agreement; Stipulation and Order re:  
8 Settlements, Docket # 183). These plaintiffs settled their damages claims as follows:  
9

10 Ron Smith: \$48,000

11 Jennifer Hansen: \$10,000

12 Scott Bohning: \$30,000

13 Lindsay Parkinson: \$31,250  
14

15 These settlements for these four plaintiffs essentially represent verdicts on their civil rights  
16 claims. Thus, with respect to the damages claims of Ron Smith et. al., those Plaintiffs have  
17 "prevailed" against Defendants, and are now entitled to reasonable attorneys' fees and costs  
18 associated with their claims, from beginning to end.<sup>3</sup>

19 This case settled less than six weeks before the January 24, 2006, trial date. Despite what  
20 appeared to be some quite egregious conduct by members of the OPD on April 7, 2003, the City  
21 of Oakland fought these damages claims tenaciously and aggressively. Defendants refused to  
22 make reasonable settlement offers to these Plaintiffs, making small Rule 68 offers of judgment  
23 after three unsuccessful settlement conferences. Haddad 2d Supp. Decl. ¶ 18.  
24

25 By the time these claims settled, the *Coles* Plaintiffs were ready to go to trial. It was only  
26

---

27 <sup>3</sup> This motion only addresses these plaintiffs' claims for fees and costs related to their damages claims,  
28 since all of the *Coles* plaintiffs still have pending a motion for fees and costs related to their previously  
settled declaratory and injunctive relief claims.

1 the imminence of trial that created the conditions for these reasonable damages settlements.

2 By that time, the *Coles* Plaintiffs had taken 21 depositions of Oakland Police officers and  
3 command staff<sup>4</sup> (of the approximately 200 OPD employees involved in the incident and its  
4 aftermath); attended defense depositions of each Plaintiff and a handful of non-party witnesses  
5 with information related to these Plaintiffs' cases; attended defense medical examinations of some  
6 of the Plaintiffs; met with and attended depositions of Plaintiffs' medical treaters; consulted with  
7 Plaintiffs' liability and medical expert witnesses through the drafting of their Rule 26 reports;  
8 analyzed defense Rule 26 expert witness reports; drafted answers to Defendants' two sets of  
9 interrogatories and requests for admissions to each Plaintiff; drafted responses to Defendants'  
10 motion to dismiss, Defendants' motion to certify denial of their motion to dismiss for appeal, and  
11 Defendants' motion for partial summary judgment; drafted Plaintiffs' motion for partial summary  
12 judgment; produced, reviewed, and analyzed disclosures of documents numbering several  
13 thousand pages; reviewed several hours of videotape from the Port incident and subsequent party  
14 admissions; drafted Plaintiffs' interrogatories and requests for admissions to Defendants; reviewed  
15 multiple documents and videotapes subpoenaed by Defendants; located, contacted and interviewed  
16 non-party witnesses; reviewed medical records and consulted with Plaintiffs' medical treaters,  
17 among other substantive work on this case. Haddad 2d Supp. Decl., ¶ 19. All of this is well-  
18 documented in Plaintiffs' counsel's time summaries filed herewith. *See*, Haddad 2d Supp. Decl.,  
19 Exhs. C and D; Sherwin Supp. Decl., Exhs C and D.

23 For example, the complex, factually detailed, and hard fought nature of these proceedings  
24 (much like the underlying events at the Port of Oakland) is evidenced in the parties' thoroughly  
25 prepared cross-motions for partial summary judgment. Dkt. Nos. 122, 125.

26 By the time this case settled on the eve of trial, these four Plaintiffs' attorneys' fees  
27

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28 <sup>4</sup> Some of these police officers' depositions were two volumes.

1 amounted to 463.1 hours for Michael J. Haddad and 256.4 hours for Julia Sherwin, not including  
2 those fees requested in the motion for attorneys' fees already before this Court related to the  
3 injunctive relief. Moreover, *this fee petition does not include more than 196 hours devoted to the*  
4 *damages claims for Sri Louise Coles and Dave Telles.*<sup>5</sup> Additionally, this fee petition does not  
5 include 23.8 hours deducted in the exercise of billing judgment.  
6

7 Plaintiffs' counsel submitted their time summaries related to the Ron Smith, et. al.,  
8 damages claims to Defendants on May 8, 2006. Haddad 2d Supp. Decl., ¶ 3.

9 The parties had another settlement conference with Magistrate Larson on June 7, 2006. At  
10 this settlement conference, Defendants offered to settle *all* of Plaintiffs' attorneys' fees and costs,  
11 including those related to the injunctive relief claims, for a total of \$125,000. *Id.* This was the  
12 first offer to settle the *Coles* Plaintiffs' claims for attorneys' fee and costs that Defendants had ever  
13 made in this case. Through Judge Larson, Defendants stated that they would never agree to pay  
14 any more than \$200,000 for all of Plaintiffs' attorneys' fees and costs throughout this entire  
15 litigation. The settlement conference ended unsuccessfully. *Id.*  
16

17 Having prevailed not only in their challenge to the OPD's crowd control policy, but also in  
18 receiving substantial settlements for each of their damages claims -- and having agreed with  
19 Defendants that their attorneys' fees and costs will be paid separately and resolved by motion to  
20 this Court -- these four Plaintiffs are now entitled to an award of reasonable attorneys' fees and  
21 costs under both federal and state law: 42 U.S.C. § 1988; California Civil Code §§ 52.1 and 51.7,  
22 and Code of Civil Procedure § 1021.5.  
23

24 In this motion, Plaintiffs request a lodestar of \$297,062.00, and \$19,951.67 in costs and

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25 <sup>5</sup> Both Sri Louise Coles and Dave Telles settled their cases for lump sums including fees and costs related  
26 to their damages claims, and specifically excluded their fees and costs related to injunctive relief. (Dkt  
27 Nos. 175, 171, 152). In this motion for attorneys' fees and costs, to avoid making any claim for fees and  
28 costs solely – or even primarily – related to the claims of Ms. Coles and Mr. Telles, Haddad & Sherwin  
have *excluded* from their fee petition more than 196 hours devoted to their damages claims. Haddad 2d  
Supp. Decl. ¶ 20.

1 expenses, plus a modest 1.5 lodestar enhancement under California law for work on the merits.  
 2 This request is eminently reasonable: the number of hours spent is fully documented by time  
 3 summaries from contemporaneous records and reflects the important issues and intense litigation  
 4 Plaintiffs' counsel faced in this action; the hourly rates are well within the range of prevailing  
 5 market rates for similarly complex federal litigation; and, under California law, lodestar  
 6 enhancements to reflect contingent risk, exceptional efficiency and results, and the public interests  
 7 served by this lawsuit are necessary to arrive at a fee that is reasonable by marketplace standards.  
 8

9 **III. PLAINTIFFS ARE ENTITLED TO THEIR REASONABLE ATTORNEYS' FEES**  
 10 **AND COSTS**

11 Plaintiffs are entitled to an award of reasonable attorneys' fees under four separate statutes:  
 12 42 U.S.C. §1988, California Civil Code §§ 52(b)(3) and 52.1(h), and California Code of Civil  
 13 Procedure § 1021.5.<sup>6</sup> Fees are properly awardable to Plaintiffs for all pending civil rights claims.  
 14 *Gerling Global Reinsurance Corp. of Am. v. Garamendi*, 400 F.3d 803, 807-808 (9<sup>th</sup> Cir. 2005)  
 15 *citing Maher v. Gagne*, 448 U.S. 122, 132 n.15 (1980) (pendent claims arising from "common  
 16 nucleus of operative fact" also support fee award).  
 17

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18 <sup>6</sup> Plaintiffs brought claims under 42 U.S.C. §§ 1983 and 1988 for violation of the First, Fourth, and  
 19 Fourteenth Amendments, and under California Civil Code §§ 52.1 (interference or attempted interference  
 20 with civil rights) and 51.7 (subjection to violence or intimidation on account of political affiliation, speech,  
 21 association, or other basis). Dkt No. 92 (Third Am. Complaint).

22 42 U.S.C. §1988 provides in pertinent part: "In any action or proceeding to enforce a provision of  
 23 section ... 1983 ..., the court, in its discretion, may allow the prevailing party, other than the United States,  
 24 a reasonable attorney's fee as a part of costs...."

25 California Civil Code § 52(b)(3) provides for an award of "attorney's fees as may be determined by the  
 26 court."

27 California Civil Code § 52.1(h) provides in relevant part: "In addition to any damages, injunction, or  
 28 other equitable relief awarded in an action brought pursuant to subdivision (b), the court may award the  
 petitioner or plaintiff reasonable attorney's fees."

California Code of Civil Procedure §1021.5 provides: "Upon motion, a court may award attorneys' fees  
 to a successful party against one or more opposing parties in any action which has resulted in the  
 enforcement of an important right affecting the public interest if: (a) a significant benefit, whether  
 pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the  
 necessity and financial burden of private enforcement, ..., are such as to make the award appropriate, and  
 (c) such fees should not in the interest of justice be paid out of the recovery, if any. ..."

1 Under each statute, a prevailing plaintiff “should ordinarily recover an attorney’s fee  
2 unless special circumstances would render such an award unjust.” *Hensley v. Eckerhart*, 461 U.S.  
3 424, 429 (1983). In addition, §1021.5 requires that the action have enforced an important right  
4 affecting the public interest and conferred a significant benefit on the general public or a large  
5 class of persons. Each of these requirements is met here.

6  
7 **A. The Settlement Makes Plaintiffs the Prevailing Parties.**

8 It is undisputed that the favorable settlement of their damages claims -- with amounts paid  
9 to each Plaintiff that does “not include Plaintiffs’ costs and attorneys’ fees, which the parties agree  
10 will be resolved by motion to the court”-- qualifies Plaintiffs as the “prevailing” parties in this  
11 litigation, entitled to an award of reasonable attorneys’ fees and costs. Plaintiffs qualify as  
12 “prevailing parties” when they have achieved judicially enforceable relief that “materially alters  
13 the legal relationship between the parties by modifying the defendant’s behavior in a way that  
14 directly benefits the plaintiff.” *Richard S. v. Dept. of Dev. Services*, 317 F.3d 1080, 1087 (9<sup>th</sup> Cir.  
15 2003), quoting *Barrios v. California Interscholastic Federation*, 277 F.3d 1128, 1134 (9<sup>th</sup> Cir.  
16 2002). Judicially enforceable relief may be obtained by settlement: “A plaintiff ‘prevails, and thus  
17 is entitled to attorney’s fees and costs, when he or she enters into a legally enforceable settlement  
18 agreement with the defendant.” 317 F.3d at 1086, citing *Barrios*, 277 F.3d at 1134.

19  
20 California law is similar, if not broader. See *Graham v. DaimlerChrysler Corp.*, 34 Cal.4<sup>th</sup>  
21 556, 569 (2004) (interpreting California’s standard more broadly than federal standard).

22  
23 Neither statutory scheme requires a finding that Plaintiffs would have prevailed on the  
24 merits had the case continued: “Nothing in the language of § 1988 conditions the District Court’s  
25 power to award fees on full litigation of the issues or a judicial determination that the plaintiff’s  
26 rights have been violated.” *Sablan v. Dept. of Finance of the Commonwealth of the Northern*  
27 *Mariana Islands*, 856 F.2d 1317, 1324 (9<sup>th</sup> Cir. 1988), quoting *Hanrahan v. Hampton*, 446 U.S.  
28

1 754, 757 (1980). Instead, Plaintiffs are entitled to fees if their action was “not frivolous,  
2 unreasonable, or groundless.” *See, e.g., Sablan*, 856 F.2d at 1327; *Graham*, 34 Cal.4<sup>th</sup> at 575-76.

3 **B. Public Policy Strongly Favors a Fee Award.**

4 The plaintiff who brings a civil rights case acts not only on his or her own behalf, but also  
5 as a “‘private attorney general,’ vindicating a policy that Congress considered of the highest  
6 priority.” *Newman v. Piggie Park Enterprises, supra*, 390 U.S. 400, 402 (1968); *Martin v.*  
7 *Heckler*, 773 F.2d 1145, 1150 (11<sup>th</sup> Cir. 1985)(*en banc*). To require Defendants to pay reasonable  
8 attorney’s fees does not create a windfall, but “fulfills the Congressional purpose of §1988(b).”  
9 *Thomas v. City of Tacoma*, 410 F.3d 644, 649 (9<sup>th</sup> Cir. 2005).

11 The overriding purpose of § 1988 fee awards is to compensate attorneys who vindicate  
12 protected rights: “A primary congressional purpose in enacting section 1988 was to encourage  
13 worthwhile litigation that is necessary to protect civil rights.... Where parties prevail in  
14 vindicating important rights, but receive little or no financial benefit as a result of that litigation, it  
15 was considered unfair for those parties to bear their own attorney’s fees.” *Martin v. Heckler*, 773  
16 F.2d at 1150-1151. Fee awards “are not designed to penalize defendants, but are rather to  
17 encourage injured individuals to seek judicial relief.... [F]ee awards should be the rule rather than  
18 the exception.” *Teitelbaum v. Sorenson*, 648 F.2d 1248, 1251 (9<sup>th</sup> Cir. 1981).

20 While civil rights attorney’s fee awards are meant to encourage voluntary compliance, that  
21 is secondary to their purpose of providing an entitlement to fees to prevailing parties whose  
22 actions vindicate protected rights. *Id.* Section 1988, with its attorneys’ fees provision, “was  
23 enacted for the very purpose of influencing governmental entities to make thoughtful efforts to  
24 avoid civil rights violations.” *Ackerley Communications, Inc. v. City of Salem*, 752 F.2d 1394,  
25 1398 (9<sup>th</sup> Cir. 1985)(emphasis added).

27 In this case, Plaintiffs brought civil rights claims as private attorneys general, and in  
28

1 addition to achieving sweeping injunctive relief and a “model policy” limiting Defendants’ use of  
 2 force when dealing with crowds, obtained substantial damages compensation vindicating the  
 3 constitutional principles that governments may not forcefully attack people who peacefully  
 4 exercise their First Amendment rights.

5 Defendants refused to negotiate the Plaintiffs’ damages claims until the very end. The  
 6 parties went through three unsuccessful settlement conferences with Defendants, on July 16, 2004,  
 7 July 23, 2004, and November 18, 2004. Haddad 2d Supp. Decl. ¶ 18.

9 On February 14, 2005, Defendants mailed a letter with low settlement offers for each  
 10 claim, demanding a response by February 16, 2005. When informed that Plaintiffs could not meet  
 11 this time demand, on February 18, 2005, Defendants issued offers of judgment sending the  
 12 message that they did not take Plaintiffs’ claims seriously.<sup>7</sup> Haddad 2d Supp. Decl. ¶ 18.

14 Each Plaintiff in this motion for fees and costs ultimately obtained significantly more in  
 15 settlement – with attorneys’ fees to be paid separately – than Defendants had offered them before:

NAME	2/05 RULE 68 OFFER*	SETTLEMENT* <sup>8</sup>
Ron Smith	\$25,000 including fees & costs	\$48,000 excluding fees & costs
Scott Bohning	\$12,500 including fees & costs	\$30,000 excluding fees & costs
Lindsay Parkinson	\$10,000 including fees & costs	\$31,250 excluding fees & costs
Jennifer Hansen	\$5,000 including fees & costs	\$10,000 excluding fees & costs
Sri Louise Coles	\$12,500 including fees & costs	\$210,000 including fees & costs*
Dave Telles	\$8,500 including fees & costs	\$8,500 including fees & costs*

25  
 26 <sup>7</sup> In a March 10, 2005 email, Defendants withdrew even these low offers of judgment. Haddad 2d Supp. Decl., ¶ 18.

27 <sup>8</sup> \* Fees and costs discussed are those relating to damages. All fees and costs related to injunctive relief  
 28 are separate, and addressed in the pending motion for fees and costs related to injunctive relief. Haddad 2d Supp. Decl., **Exhibit F**; Docket Nos. 175, 171, 152.



1           **C. Special Circumstances.**

2           There are no “special circumstances” here that would render an award “unjust.” Consistent  
3 with the purposes of civil rights fee-shifting statutes, “special circumstances” that would deny fees  
4 to a prevailing plaintiff are construed very narrowly. *New York Gas Light Club, Inc. v. Carey*, 447  
5 U.S. 54, 68 (1980); *Schmid v. Lovette*, 154 Cal.App.3d 466, 475 (1984).

6           The overriding principle is that “a prevailing party in a § 1983 action ‘*should ordinarily*  
7 *recover an attorney’s fee* unless special circumstances would render such an award unjust.”  
8 *Democratic Party of Wash. State v. Riley*, 388 F.3d 1281, 1285 (9<sup>th</sup> Cir. 2004) (emphasis added).  
9 Defendants bear the burden of proving that “special circumstances” warrant a denial of fees, and  
10 that showing “must be a strong one.” *Herrington v. County of Sonoma*, 883 F.2d 739, 744 (9<sup>th</sup> Cir.  
11 1989). *See also Borunda v. City of Richmond*, 885 F.2d 1384, 1392 (9<sup>th</sup> Cir. 1991) (“special  
12 circumstances” to deny fees to prevailing party are “severely limited” and “extremely rare”).<sup>9</sup>

13           California law takes an equally narrow view of the “special circumstances” exception.  
14 *See, e.g., Schmid v. Lovette*, 154 Cal.App. 3d 466, 476 (1984); *Los Angeles Times*  
15 *Communications, LLC v. Los Angeles County Bd. of Supervisors*, 112 Cal.App.4<sup>th</sup> 1313, 1325-  
16 1235 (2003). *See generally* Pearl, *Calif. Attorney Fee Awards, 2d ed.*, sec. 2.6, pp. 27-30  
17 (Cal.Cont.Ed.Bar 2004) (collecting cases).

18           In this case, having agreed to pay Plaintiffs’ attorneys’ fees and costs separately,  
19 Defendants cannot claim ‘special circumstances’ make enforcement of their agreement unjust.<sup>10</sup>

20           **D. Plaintiffs Satisfy the Elements of California Code of Civil Procedure § 1021.5.**

21           Plaintiffs also qualify for a fee award under California’s private attorney general statute,  
22  
23

24  
25 <sup>9</sup> The reason for this narrow construction was explained in *Maloney v. City of Marietta*, 822 F.2d 1023,  
26 1027 (11<sup>th</sup> Cir. 1987): “The special circumstances exception is a judicially created concept, not mentioned  
in any of the fee award statutes, and therefore ‘should be narrowly construed so as not to interfere with the  
congressional purpose in passing such statutes.’”

27 <sup>10</sup> In its Order related to injunctive relief fees, this Court found, “Defendants have failed to make any  
28 showing, let alone the required strong showing, that special circumstances make an award of fees unjust in  
these cases.” Order filed September 27, 2005, Dkt No. 115, (hereinafter, “September 27 Order”) pp. 1, 10.



1 Code of Civil Procedure § 1021.5.<sup>11</sup> First, they have enforced important rights affecting the public  
2 interest. Plaintiffs' claims are based on their federal and state constitutional rights to be free from  
3 the use of excessive force, particularly force used in retaliation for First Amendment protected  
4 activity. See *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185 (9<sup>th</sup> Cir. 2001),  
5 on remand, 276 F.3d 1125 (9<sup>th</sup> Cir. 2002) (use of force against non-violent protesters); *Deorle v.*  
6 *Rutherford*, 272 F.3d 1272 (9<sup>th</sup> Cir. 2001) ('bean bags' are a very high degree of force); *Collins v.*  
7 *Jordan*, 110 F.3d 1363 (9<sup>th</sup> Cir. 1996) (First Amendment rights in crowd control situation).  
8 Similar constitutional rights have been held to constitute "important rights" *per se*. See *Press v.*  
9 *Lucky Stores, Inc.*, 34 Cal.3d 311, 318 (1983) ("[T]he determination that the public policy  
10 vindicated is one of constitutional stature ... establishes the first the three elements requisite to the  
11 award (*i.e.*, the relative societal importance of the public policy vindicated").  
12

13  
14 Second, a significant benefit has been conferred on the public or a large class of persons.  
15 The broad changes that the Oakland Police Department has agreed to make to its crowd control  
16 policies, training, and procedures will protect the public from future abuses in crowd control  
17 situations. Additionally, these Plaintiffs' damages settlements not only compensated them for the  
18 injuries they suffered; but also held the Oakland Police Department responsible for its attack on  
19 peaceful journalists and demonstrators speaking out in opposition to the war against Iraq.  
20

21 These settlements vindicated the important constitutional principles that our government  
22 shall not attack people for exercising their First Amendment rights, and that police shall not use  
23 excessive force in violation of the Fourth Amendment. These well-publicized settlements will  
24 deter other law enforcement agencies from violating the Constitution when dealing with non-  
25 violent demonstrators, and generally deter police excessive uses of force in the future.  
26

27  
28 <sup>11</sup> In its September 27, 2005, Order relating to the injunctive relief fee motion, this Court found that Plaintiffs are entitled to fees under Civil Code § 1021.5. 9/27/05 Order, Docket # 115, p. 10.

1 Third, the necessity and financial burden of private enforcement makes an award of  
2 attorneys' fees to Plaintiffs appropriate. When an action is brought against a public entity, the  
3 need for private enforcement is clear. *Woodland Hills Residential Ass'n v. City Council*  
4 (*Woodland Hills II*), 23 Cal. 3d 917, 941 (1979). The next inquiry balances the costs and benefits  
5 of the litigation: "An award on the 'private attorney general' theory is appropriate when the cost of  
6 the claimant's legal victory transcends his personal interest, that is, when the necessity for  
7 pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in  
8 the matter.' [Citation omitted.]" *Id.*

10 The relevant inquiry is whether the litigant's personal stake in the litigation exceeds its  
11 cost by a substantial margin. See *Beasley v. Wells Fargo Bank*, 235 Cal.App.3d 1407, 1416-1417  
12 (1992). Here, these four Plaintiffs' combined damages settlements amount to \$119,250. After  
13 three unsuccessful settlement conferences, Defendants made Rule 68 offers for a small fraction of  
14 the final settlement amounts, and then withdrew those offers. Defendants then refused to settle  
15 Plaintiffs' damages claims until the eve of trial in this matter, requiring Plaintiffs to incur further  
16 attorneys' fees and costs to prepare for the trial of this complex civil rights case.

18 Finally, Plaintiffs' attorneys' fees could not and should not be paid out of any recovery:  
19 the cost of obtaining this relief should not be borne solely by the Plaintiffs, who are all of very  
20 modest means. Haddad Decl. ¶ 11. See, e.g., *Notrica v. State Compensation Ins. Fund*, 70  
21 Cal.App.4<sup>th</sup> 911, 954 (1999) (§1021.5 fees awarded for obtaining injunctive relief against Fund,  
22 even though plaintiff also recovered \$5 million in punitive damages).

#### 24 **IV. PLAINTIFFS' ATTORNEYS' FEES ARE REASONABLE**

25 The fundamental objective of private attorney general fee statutes is "to encourage suits  
26 effectuating a strong [public] policy by awarding *substantial* attorney's fees...to those who  
27 successfully bring such suits." *Woodland Hills Residents Assn v. City Council*, 23 Cal.3d 917,  
28

1 933 (1979) (emphasis added). As the Ninth Circuit has recognized, civil rights actions,  
2 vindicate important public interests whose value transcends the dollar amounts that  
3 attach to many civil rights claims. Fee awards ensure that neither financial imperatives  
4 nor market considerations raise an insurmountable barrier that prevents attorneys from  
litigating meritorious cases, and even a relatively small damages award “contributes  
significantly to the deterrence of civil rights violations in the future.”

5 *Beaty v. BET Holdings, Inc.*, 222 F.3d 607, 612 (9<sup>th</sup> Cir. 2000),, quoting *City of Riverside v.*  
6 *Rivera*, 477 U.S. 561, 575 (1986).

7 Unless Plaintiffs’ attorneys are fully compensated for their efforts, the letter and spirit of  
8 Congress’ and California’s fee-shifting statutes will not be fulfilled. *See, e.g., Crommie v. P.U.C.*,  
9 840 F.Supp. at 725 (fee award must be large enough “to entice competent counsel to undertake  
10 difficult public interest cases”)(Fee awards must make civil rights cases as financially attractive as  
11 ““other types of equally complex ...litigation.”” *Blum v. Stenson*, 465 U.S. 886, 893(1984)). **“It**  
12 **must be remembered that an award of attorneys’ fees is not a gift. It is just compensation**  
13 **for expenses actually incurred in vindicating a public right.”** *Sundance v. Municipal Court*,  
14 192 Cal.App.3d 268, 273 (1987).

15  
16  
17 **A. A Summary of Plaintiffs’ Claim.**

18 Under both California and federal law, the determination of whether Plaintiffs’ attorneys’  
19 fees are reasonable begins with a determination of the lodestar -- reasonable hourly rates  
20 multiplied by the number of hours reasonably spent. *See, e.g., Hensley v. Eckerhart*, 461 U.S. at  
21 433; *Ketchum v. Moses*, 24 Cal.4<sup>th</sup> 1122, 1133-1136 (2001). Under federal law, the lodestar is  
22 presumptively reasonable. *See, Morales v. City of San Rafael*, 96 F.3d 359, 364 (9<sup>th</sup> Cir. 1996).

23 Under California law, however, the lodestar method requires adjustment to reflect other  
24 factors that go into the determination of a reasonable fee such as contingent risk and results  
25 obtained. *See Ketchum v. Moses*, 24 Cal.4<sup>th</sup> 1122, 1123 (2001); *Horsford v. The Board of*  
26 *Trustees of California State University*, 132 Cal.App.4<sup>th</sup> 359, 394 (2005). Hourly rates must be  
27

1 based on “the hourly prevailing rate for private attorneys in the community conducting  
2 *noncontingent* litigation of the same type.” *Horsford*, 132 Cal.App.4th at 394, quoting *Ketchum*,  
3 24 Cal.4<sup>th</sup> at 1133 [italics in original]. Rates are reasonable if they are “within the range of  
4 reasonable rates charged by and judicially awarded comparable attorneys for comparable work.”  
5 *Children’s Hospital Medical Center v. Bonta*, 97 Cal.App.4th 740, 783 (2002).

6  
7 In the instant case, a complete breakdown of Plaintiffs’ fee claim is attached as Appendix  
8 A. The total lodestar claimed for work on the merits related to litigation of these damages claims  
9 is \$297,062.00. *See* Haddad 2d Supp. Decl., ¶ 10; Sherwin Supp. Decl., ¶ 15. This is based on  
10 463.1 hours claimed by Mr. Haddad at \$420 per hour, and 256.4 hours claimed by Ms. Sherwin at  
11 \$400 per hour. It does not include the hundreds of hours not claimed in relation to the injunctive  
12 relief claims. It does not include over 196 hours related to the damages claims of Sri Louise Coles  
13 and Dave Telles, for which an attorney fee award is not being sought. And, it does not include the  
14 23.8 hours of compensable time deleted in the exercise of billing judgment. *See* Haddad 2d Supp.  
15 Decl., ¶¶ 10, 20; Sherwin Supp. Decl., ¶ 15.

16  
17 Haddad & Sherwin’s hourly rates have increased slightly from what they were in January  
18 2005, from \$400 and \$380 to \$420 and \$400 respectively. Market rates for attorneys in the Bay  
19 Area have increased substantially in the last year, and both Haddad & Sherwin have further  
20 experience, successes, and honors than they had at the time of last year’s motion for attorneys’  
21 fees and costs. Haddad 2d Supp. Decl., ¶ 13; Sherwin Supp. Decl., ¶ 20; Bien Decl. ¶ 2; Pearl  
22 Decl. (8/7/06) ¶ 6.

23  
24 Plaintiffs’ costs and out-of pocket expenses are also fully recoverable. *See, e.g., Lucas v.*  
25 *White*, 63 F.Supp.2d 1046, 1063 (N.D. Cal. 1999) (“It is well-established that [out-of-pocket]  
26 costs are recoverable as part of a fee award”); *Beasley v. Wells Fargo Bank*, 235 Cal.App.3d at  
27 1419 (expert witness expenses recoverable under C.C.P. § 1021.5). These costs and expenses total  
28

1 \$ 19,951.67, and do not include either costs sought in Plaintiffs' First Motion for Fees and Costs  
 2 Re: Injunctive Relief, or costs appropriately attributable to the claims of Plaintiffs Coles and  
 3 Telles. Haddad 2d Supp. Decl., ¶ 14, Ex. E.

4 The total lodestar for fee-related services (to date) is \$ 20,300. Haddad 2d Supp. Decl., ¶  
 5 10; Sherwin Supp. Decl., ¶ 16. Mr. Pearl is not claiming fees to date for this second motion  
 6 related to the damages settlements.  
 7

8 In addition, under California law, a modest 1.5 lodestar enhancement for work on the  
 9 merits is appropriate to reflect, *inter alia*, the fact that any compensation for counsel's work was  
 10 entirely contingent on obtaining relief for the Plaintiffs.

## 11 **B. Plaintiffs' Lodestar Is Reasonable**

### 12 **1. The Number of Hours Claimed Is Reasonable**

13 Under both California and federal law, Plaintiffs are entitled to be compensated for every  
 14 hour reasonably spent to vindicate their clients' interests:  
 15

16 "Where a plaintiff has obtained excellent results, his attorney should recover a *fully*  
 17 *compensatory fee*. Normally, this will encompass *all hours reasonably expended on*  
 18 *the litigation*, and indeed in some cases of exceptional success an enhanced award  
 19 may be justified."

20 *Hensley v. Eckerhart*, 461 U.S. at 435 (emphasis added). As the California Supreme Court stated,  
 21 "absent circumstances rendering the award unjust, an attorney fee award should ordinarily include  
 22 compensation for *all the hours reasonably spent,...*" *Ketchum v. Moses*, 24 Cal.4<sup>th</sup> at 1133  
 23 (emphasis in original). Once the plaintiff has presented a fully-documented claim, the burden  
 24 shifts to the defendants to show by specific evidence that the number of hours claimed is *not*  
 25 reasonable. See *Gates v. Gomez*, 60 F.3d 525, 534 (9<sup>th</sup> Cir. 1995).

26 In the instant case, several factors show that the number of hours claimed is eminently  
 27 reasonable. First, Plaintiffs' claim is fully documented by detailed time summaries, based on  
 28 contemporaneous records, that show when and how each tenth of an hour was spent. Haddad 2d

1 Supp. Decl., ¶ 10, Exh. C; Sherwin Supp. Decl., ¶ 15, Exh. C. *See Perkins v. Mobile Housing Bd.*,  
2 847 F.2d 735, 738 (11<sup>th</sup> Cir. 1988) (counsel's "sworn testimony that, in fact, it took the time  
3 claimed is evidence of considerable weight on the issue of the time required in the usual case").

4 Second, Plaintiffs' counsel have exercised billing judgment: 23.8 hours of compensable  
5 time has not been claimed. *Id.*

6  
7 Third, Plaintiffs have not claimed any time related to their injunctive relief claims, already  
8 pending before this Court. Haddad 2d Supp. Decl., ¶¶ 9-10; Sherwin Supp. Decl., ¶ 15. Nor have  
9 Plaintiffs claimed any time solely or even predominantly related to the damages claims of  
10 Plaintiffs Coles and Telles. *Id.* The only fees and costs now claimed are for the time reasonably  
11 expended to prepare this case for trial and time related to the damages claims of Plaintiffs Smith,  
12 Hansen, Bohning and Parkinson -- the time that would have been claimed if this case had not pled  
13 damages claims for any other plaintiffs. *Id.*

14  
15 Under well-established case law, no apportionment is required for work that might also be  
16 useful for clients whose claims have already resolved. *See, e.g., Cinevision Corp. v. City of*  
17 *Burbank*, 745 F.2d 560, 581 (9<sup>th</sup> Cir. 1984) (time spent on matters that is useful to both fee-  
18 shifting and (potentially) non-fee-shifting claims is fully compensable without apportionment),  
19 *cert.denied*, 471 U.S. 1054 (1985); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172  
20 Cal.App.3d 914, 958 (1985) (same).

21  
22 Fourth, Plaintiffs' counsel used considerable discretion in the work they did *and did not*  
23 *do*. Haddad 2d Supp. Decl., ¶¶ 4, 5, 19; Sherwin Supp. Decl., ¶¶ 6-8. Any lesser effort by  
24 Plaintiffs' counsel might well have threatened Plaintiffs' rights. *See Bankston v. State of Illinois*,  
25 60 F.3d 1249, 1256 (7<sup>th</sup> Cir. 1995) (full fee award appropriate unless defense can show that  
26 Plaintiffs' counsel "could have done significantly less work without jeopardizing the claims he did  
27 win").  
28

1 Finally, *Coles* counsel coordinated closely with *Local 10* counsel and there was no  
2 unnecessary duplication of effort. *Id.* While each *Coles* plaintiff had his or her own damages  
3 claim independent from those of the *Local 10* plaintiffs, counsel for both cases shared deposition  
4 transcripts and evidence and coordinated their work to keep costs down. *Id.* Additionally, within  
5 the firm of Haddad & Sherwin, Michael Haddad was primarily responsible for the injunctive relief  
6 negotiations for the *Coles* plaintiffs; Julia Sherwin was primarily responsible for the damages  
7 work; and the two attorneys divided the responsibility for preparing the liability portion of the  
8 case for trial. *Id.*

10 When, as here, multiple attorneys are warranted, a reduction for “duplication” is  
11 appropriate only where the defendant can show that plaintiff’s counsel were “*unreasonably* doing  
12 the same work.” *Johnson v. Univ. College*, 706 F.2d 1205, 1208 (11<sup>th</sup> Cir. 1983), *cert. den.*, 104  
13 S.Ct. 489 (1983) (emphasis the court’s). No such showing can be made here. The appearance of  
14 multiple attorneys at depositions, hearings, or settlement meetings was fully justified by the nature  
15 and scope of the issues, by the separate parties that counsel represented (*see United States v. City*  
16 *& County of San Francisco*, 748 F.Supp. 1416, 1420 (N.D. Cal. 1990), *aff’d sub nom Davis v.*  
17 *City & County of San Francisco*, 972 F.2d 1536, 1544 (9<sup>th</sup> Cir. 1992) (no duplication where  
18 counsel represented distinct parties)), and by the separate responsibilities each counsel had  
19 pursuant to their division of labor (*see Democratic Party of State of Washington v. Riley*, 388 F.3d  
20 1281 (9<sup>th</sup> Cir. 2004)). Haddad 2d Supp. Decl., ¶ 5. A fully compensatory fee is appropriate.

## 23 2. Counsel’s Hourly Rates Are Reasonable.

24 Under both federal and state law, Plaintiffs’ counsel are entitled to the hourly rates they  
25 have claimed if those rates are “in line with” the rates charged by attorneys of comparable  
26 experience, expertise, and skill for comparable work. *See Blum v. Stenson*, 465 U.S. 886, 895 fn.  
27 11 (1984); *Children’s Hosp. & Med. Ctr. v. Bonte*, 97 Cal.App.4<sup>th</sup> 740, 783 (2002). The fair  
28



1 market value of the work performed sets the measure, as determined by the rates charged by  
2 commercial firms for comparably complex federal litigation. *Davis v. City & County of San*  
3 *Francisco*, 976 F.2d at 1547. *See also U.S. v. City & County of San Francisco*, 748 F.Supp. at  
4 1431 (plaintiff's attorneys entitled to rates charged by "corporate attorneys of equal caliber").

5 In this phase of the case, Mr. Haddad's \$420 per hour rate reflects his fifteen years of  
6 experience as a civil rights trial lawyer, and particularly his extensive trial experience: he has tried  
7 more than 16 cases, and was a partner in a prominent, nationally respected civil rights firm before  
8 he came to California. He has specialized in civil rights and police misconduct law for his entire  
9 legal career and is a regular presenter at seminars on those issues. He is now the Treasurer of the  
10 National Police Accountability Project, a panel attorney and advisor to Bay Area Police Watch,  
11 and Treasurer of the Board of the Alameda Contra Costa Trial Lawyers Association (ACCTLA).  
12 Haddad Decl. ¶¶ 1-9; Haddad 2d Supp. Decl., ¶ 2.

13 Ms. Sherwin's \$400 per hour rate reflects her eleven years of experience as a trial lawyer.  
14 Sherwin Decl. ¶¶ 12-16. Like Mr. Haddad, Ms. Sherwin's experience has focused on civil rights  
15 litigation, and has included significant successes on novel legal issues in both state and federal  
16 courts, especially in the First Amendment area. *Id.* She is President-Elect of the ACCTLA, where  
17 she has been the editor of the ACCTLA's publication, The Verdict, and on the Executive  
18 Committee for the past three years. She is also a panel attorney and advisor for Bay Area Police  
19 Watch, and has been cooperating counsel with the Center for Constitutional Rights. Sherwin  
20 Decl. ¶¶ 13; Sherwin Supp. Decl., ¶¶ 3-5.

21 Mr. Haddad's and Ms. Sherwin's rates are well within the range of rates charged by  
22 similarly experienced and skilled Bay Area attorneys for comparable federal litigation. *See*  
23 *Sturdevant Decl.*, ¶ 10; *Pearl Decl.*, ¶¶ 6 -11; *Bien Decl.*, ¶2. Specifically, Mr. Haddad's rate is in  
24 line with those charged by the following firms (*Pearl Decl.*, ¶ 9):  
25  
26  
27  
28



FIRM	YEAR	ATTY'S YEARS OF EXPERIENCE	RATE
Bushnell Caplan & Fielding	2005	13	\$400
Chavez & Gertler	2005	16*	475
Cooley Godward	2003	14	415
Heller Ehrman White & McAuliffe	2003	14	405
Lerach Coughlin, et al.	2003	14	395-460
Lieff, Cabraser, et al.	2003	13	430-450
Morgan Bockus et al.	2003	13	470
Schneider & Wallace	2004	13	435

\* Associate rate

Ms. Sherwin's rate is in line with the rates charged by the following firms (*id.*):

FIRM	YEAR	ATTY'S YEARS OF EXPERIENCE	RATE
Chavez & Gertler	2005	10*	\$395
Heller Ehrman et al.	2003	10*	378**
Keker & Van Nest.	2003	9	380
Lerach Coughlin et al.	2003	10	385
O'Melveny & Myers	2002	9	390
Schneider & Wallace	2004	11	435
Skadden, Arps et al.	2004	8	435

\* Associate rate; \*\* Discounted rate;

Counsel's rates also are consistent with prior awards they have received. In fact, four years ago, this Court found that counsel's then-current rates of \$325 per hour for Mr. Haddad and \$290 per hour for Ms. Sherwin were reasonable. *See* Order Granting Plaintiffs' Motion for Reasonable Attorneys' Fees and Costs, filed June 12, 2002, in *Homes Not Jails v. City of San Francisco*, N.D. Cal. No. C 99-4204 TEH (Haddad Decl., Exh. U). Given their increased experience and skill, counsel's current hourly rates are entirely consistent with this prior award.

1 See *United Steelworkers v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9<sup>th</sup> Cir. 1990).

2 Finally, Mr. Pearl's rate also is reasonable. He is a 37-year attorney with extensive  
3 experience litigating attorney fee matters in federal and state trial and appellate courts. Pearl  
4 Decl., ¶¶ 2-6 and Exh. A. He is the author of both state and federal manuals on attorney fee  
5 awards, including *California Attorney Fee Awards*, 2d Ed., published by California's Continuing  
6 Education of the Bar in 1994 and updated annually since. *Id.* Numerous courts have determined  
7 his rates to be reasonable. *Id.*, ¶ 6. See also Sturdevant Decl., ¶ 10 (Pearl's rate "below market").  
8

9 **C. To Reflect the Legal Marketplace, a Modest Lodestar Enhancement Is**  
10 **Appropriate**

11 Plaintiffs seek a modest 1.5 lodestar enhancement for their work on the merits of these  
12 plaintiffs' damages claims, as authorized by California law. Under that law, as the California  
13 Supreme Court has recognized, the "lodestar" represents only the fee that a fee-paying client  
14 would have paid in an ordinary case, win or lose: "Under our precedents, the unadorned lodestar  
15 reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation  
16 for contingent risk, extraordinary skill, or any other factors a trial court may consider under  
17 *Serrano III.*" *Ketchum v. Moses*, 24 Cal.4<sup>th</sup> at 1138.  
18

19 The lodestar method, however, is intended to mirror the legal marketplace. *Id.* To  
20 determine a fee that truly reflects that marketplace, the court must also consider non-lodestar  
21 factors that warrant a higher fee in the marketplace, like contingent risk, and then adjust the  
22 lodestar accordingly: "The adjustment to the lodestar figure, e.g., to provide a fee enhancement  
23 reflecting the risk that the attorney will not receive payment if the suit does not succeed, ... is  
24 intended to approximate market-level compensation for such services, which typically includes a  
25 **premium for the risk of nonpayment or delay in payment of attorney fees.**" *Id.* (emphasis  
26 added). This is not a "bonus;" rather, it "constitutes **earned compensation**; unlike a windfall, it is  
27 neither unexpected nor fortuitous." *Id.*  
28

1 In the instant case, these factors compel an enhancement of Plaintiffs' lodestar in order to  
2 arrive at a reasonable attorneys' fee that conforms to marketplace standards.

3 **1. The Substantial Risk Taken by Plaintiffs' Counsel Supports**  
4 **A Lodestar Enhancement.**

5 As we have shown, *Ketchum* recognizes that in the legal marketplace, an attorney who  
6 takes a significant risk, *i.e.*, whose compensation is dependent on success, should and does expect  
7 a higher fee than an attorney who is paid a market rate as the case goes along, win or lose. 24  
8 Cal.4<sup>th</sup> at 1138. Fee awards that fail to take that risk into account do not reflect the legal  
9 marketplace, creating a disincentive for competent attorneys to accept public interest cases:

11 The purpose of a fee enhancement, or so-called multiplier, for contingent risk is to  
12 bring the financial incentives for attorneys enforcing important constitutional rights  
... into line with incentives they have to undertake claims for which they are paid  
on a fee-for-services basis.

13 The economic rationale for fee enhancement in contingency cases has been  
14 explained as follows: "A contingent fee must be higher than a fee for the same  
15 legal services paid as they are performed. ... " (Posner, *Economic Analysis of Law*  
16 (4th ed. 1992) pp. 534, 567.) "A lawyer who both bears the risk of not being paid  
and provides legal services is not receiving the fair market value of his work if he  
17 is paid only for the second of these functions. ***If he is paid no more, competent  
counsel will be reluctant to accept fee award cases.***" (Leubsdorf, *The Contingency  
Factor in Attorney Fee Awards* (1981) 90 *Yale L.J.* 473, 480.

18 24 Cal.4<sup>th</sup> at 1132-1133 (emphasis added).

19 To determine the "market value" of counsel's services, the court "must take into  
20 consideration that any compensation has been deferred ... [that it has] substantially precluded  
21 other work during that extended period, ...; and that ***a failure to fully compensate for the  
22 enormous risk in bringing even a wholly meritorious case would effectively immunize large or  
23 politically powerful defendants from being held to answer for Constitutional deprivations,  
24 resulting in harm to the public.***" *Horsford v. The Board of Trustees of California State  
25 University*, 132 Cal.App.4<sup>th</sup>, 399-400, 33 Cal. Rptr. 3d 644 (2005) (emphasis added).

27 The *Horsford* court explained that under California law, "the contingent and deferred  
28

1 nature of the fee award in a civil rights or other case with statutory attorney fees *requires* that the  
2 fee be adjusted in some manner to reflect the fact that the fair market value of legal services  
3 provided on that basis is greater than the equivalent noncontingent hourly rate.” 132 Cal. App. 4th  
4 at 394-395 (emphasis added).

5 The principal risk that must be compensated is the risk of not prevailing at all. *See*  
6 *Graham v. DaimlerChrysler*, 34 Cal.4<sup>th</sup> 556, 583 (2004) As *Horsford* explains, “the focus is on  
7 the fact that litigation is fraught with uncertainty and even the most scrupulous attorney will ‘win  
8 some and lose some,’ as the saying goes. .... there is...a great element of contingency in any fee  
9 system that rewards only attorneys for prevailing parties.” 132 Cal. App. 4th at 400, n. 11. The  
10 Court also must consider, however, the risk of prevailing but not recovering a fee award. *See*  
11 *Graham*, 34 Cal.4<sup>th</sup> at 583 (noting risk involved in proving elements of § 1021.5).

12 Here, even though Plaintiffs believed their case was strong, there was a substantial risk  
13 that they would not prevail on the merits, for any of a number of reasons. *See* Bien Decl., ¶ 4. In  
14 the legal marketplace, an attorney deciding whether to take this case for purely financial reasons,  
15 given the alternative of non-contingent work at market rates, would not take it unless he or she  
16 could expect a fee that was at least twice the non-contingent rate if the case was successful. Bien  
17 Decl., ¶¶ 3-5; Pearl Decl., ¶¶ 12-15. *See also* Sturdevant Decl., ¶ 11; Sobel Decl. (Local 10 Dkt.  
18 No. 82) ¶¶ 14-18

19 Given Defendant’s vehement opposition, there also was a great risk that even though  
20 Plaintiffs had accomplished so much, they might be denied any fees for their work. Haddad 2d  
21 Supp. Decl. ¶ 4. *See Graham*, 34 Cal.4<sup>th</sup> at 583 (recognizing that some fee motions are riskier  
22 than others). In the legal marketplace, this type of risk also commands a higher fee than a non-  
23 contingent fee paid, win or lose. Sturdevant Decl., ¶ 11; Bien Decl., ¶¶ 3-5; Pearl Decl., ¶¶ 13-14.  
24 Under California law, any fee award must take this marketplace reality into account.  
25  
26  
27  
28

1 This economic reality of contingent fee cases has been recognized repeatedly in this  
2 District. In *Crommie*, for example, a two-plaintiff age discrimination action, this District Court  
3 determined that a reasonable fee required a **2.0** multiplier, based on such factors as contingent  
4 risk, results achieved, the difficulties inherent in such cases, and the public interest value of the  
5 case. 840 F.Supp. at 726. That enhancement was affirmed by the Ninth Circuit. 67 F.3d at 1479.  
6

7 Likewise, in *Chabner v. United of Omaha Life Ins. Co.*, 1999 U.S. Dist. LEXIS 16552  
8 (N.D. Cal. 1999), a challenge to discriminatory life insurance pricing, the court determined that a  
9 reasonable fee under California law must include a 2.0 lodestar enhancement. That  
10 enhancement also was affirmed by the Ninth Circuit. 225 F.3d 1042, 1053 fn. 11 (9<sup>th</sup> Cir. 2000).  
11 *See also Homes Not Jails v. City of San Francisco* (Haddad Decl., Exh. U) (1.25 multiplier based,  
12 *inter alia*, on contingent risk).  
13

14 These marketplace realities are present here as well. Had Plaintiffs' counsel not obtained  
15 these settlements, all of the effort that Plaintiffs' counsel spent on this case would have gone  
16 uncompensated. Haddad Decl., ¶ 11; Haddad 2d Supp. Decl. ¶ 4. A fee that compensates them as  
17 if they had represented fee-paying clients, win or lose, simply does not comport with basic  
18 marketplace principles. Sturdevant Decl., ¶ 11; Pearl Decl., ¶¶ 12-14. Instead, it seriously  
19 undervalues their work. *See Ketchum*, 24 Cal.4<sup>th</sup> at 1132-1133. A modest enhancement is  
20 required here to compensate Plaintiffs' attorneys for the great risk they took to vindicate not only  
21 the Plaintiffs' but the public's fundamental rights. *See Greene v. Dillingham Const., N.A.*, 101  
22 Cal.App.4<sup>th</sup> 418, 428 (2002)(trial court *must* consider contingent risk).  
23

24 Additionally, H&S advanced all case costs for their clients, who were without the means to  
25 pay for their own costs. Haddad Decl. ¶ 11; Haddad 2d Supp. Decl. ¶ 4. While risking their own  
26 money to finance this case, along with the possibility of non-payment for their many hours of  
27 work, handling this case also resulted H&S having to turn away other work. Haddad Decl. ¶ 31;  
28

1 Haddad 2d Supp. Decl. ¶ 4.

2 **2. The Efficiency By Which the Settlement Was Achieved Supports a**  
3 **Lodestar Enhancement**

4 Under California law, a lodestar enhancement also is appropriate if counsel have shown  
5 exceptional efficiency in obtaining an exceptional result. *See Graham*, 34 Cal.4<sup>th</sup> at 582. In this  
6 case, the *Coles* Plaintiffs' counsel have shown just such exceptional efficiency: they have  
7 vindicated the public's critical rights with a minimum expenditure of hours, consistent with a  
8 public policy that favors settlement of serious disputes without sacrificing the interests of the  
9 clients or the public. *Lealao v. Beneficial California*, 82 Cal.App.4<sup>th</sup> 19, 52 (2000). The results  
10 they have achieved are exceptional as well: each Plaintiff received a settlement significantly  
11 better than Defendants' offers. And, Plaintiffs' counsel prepared these four Plaintiffs' damages  
12 claims up to six weeks before trial involving 35 depositions, liability and damages experts on both  
13 sides, thousands of pages of documents, and many hours of videotape, in only 719.5 hours.

15 **3. The Public Interest Value of Plaintiffs' Lawsuit Warrants**  
16 **Enhancement of the Lodestar**

17 A third factor justifying enhancement is the public interest served by Plaintiffs' lawsuit.  
18 *See, e.g., State v. Meyer* (1985) 174 Cal.App.3d 1061, 1073 (lodestar enhancement justified by  
19 "public service element ... and motivation to represent consumers and enforce laws"); *Crommie v.*  
20 *PUC*, 840 F.Supp. at 726 (2.0 multiplier justified in part by "public interest value" of plaintiffs'  
21 age discrimination lawsuits). *See also Homes Not Jails v. City of San Francisco* (Haddad Decl.,  
22 Exh. U) (1.25 multiplier based, *inter alia*, on public interest value of case).

24 Here, Plaintiffs' lawsuit not only led to significant changes in the Oakland Police  
25 Department's crowd control policies but also vindicated important First and Fourth Amendment  
26 rights. These settlements will have a deterrent effect on other law enforcement officers and  
27 agencies who might otherwise violate Constitutional rights.

1 Police misconduct actions are extremely difficult to litigate and to win. Bien Decl. ¶ 4.  
 2 *See, e.g., Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002), *aff'd* 67  
 3 Fed. Appx. 408 (9<sup>th</sup> Cir. 2003) (1.5 multiplier based primarily on undesirability of police  
 4 misconduct actions). A public interest enhancement will encourage other attorneys to take on  
 5 similar cases and deter other law enforcement agencies from engaging in similar practices. *See*  
 6 *Edgerton v. State Personnel Board*, 83 Cal. App. 4<sup>th</sup> 1350, 1363 (2000) (affirming 1.5 multiplier  
 7 based in part on importance of privacy rights vindicated and deterrent effect decision will have on  
 8 others); *Homes Not Jails, supra*. Counsel like Plaintiffs' who are willing to serve the public  
 9 interest should be compensated accordingly.

11 **V. CONCLUSION AND RELIEF REQUESTED**

12 The plain intent of both Congress and the California Legislature in enacting fee-shifting  
 13 statutes as part of their civil rights laws was to encourage competent attorneys to take on difficult  
 14 cases like this one. *See, e.g., Walker v. Carnival Cruise Lines*, 107 F. Supp. 2d 1135, 1145 (N.D.  
 15 Cal. 2000). If that purpose is to be served, Plaintiffs' counsel must be fully compensated for their  
 16 efforts. Plaintiffs respectfully request that this Court grant this motion as set forth above and in  
 17 Appendix A.

19 Dated: August 7, 2006

20 Respectfully Submitted,  
 21 HADDAD & SHERWIN  
 22 MICHAEL J. HADDAD  
 23 JULIA SHERWIN

24 /s/ \_\_\_\_\_  
 25 JULIA SHERWIN

26 LAW OFFICES OF RICHARD M. PEARL  
 27 RICHARD M. PEARL

28 /s/ \_\_\_\_\_  
 RICHARD M. PEARL

Attorneys for Plaintiffs

**APPENDIX A****COLES, ET AL V. CITY OF OAKLAND, ET AL.****SUMMARY OF DAMAGES FEE CLAIM****MERITS**

<b><u>Attorney</u></b>	<b><u>Years</u></b>	<b><u>Hours</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Lodestar</u></b>
Michael J. Haddad	15	463.10	\$420	\$ 194,502.00
Julia Sherwin	11	256.40	400	102,560.00
<b>Total Lodestar</b>				<b>\$297,062.00</b>
<b>Total Fee with 1.5 Enhancement</b>				<b>\$445,593.00</b>

**FEE RELATED SERVICES**

Michael J. Haddad	15	29.00	420	12,180.00
Julia Sherwin	11	20.30	400	8,120.00
Richard M. Pearl	37	0	525	0
<b>Total Lodestar</b>				<b>\$ 20,300.00</b>
<b>Costs and Out-of-Pocket Expenses</b>				<b>\$ 19,951.67</b>
<b>TOTAL REASONABLE ATTORNEYS' FEES</b>				<b>\$485,844.67</b>