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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION, ET AL.

Defendants.

Case No.: 1:17-cv-00151-BLW

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR REASONABLE ATTORNEYS' FEES AND EXPENSES

INTRODUCTION

Plaintiff is the fully prevailing party in this lawsuit, having achieved all of the relief she set out to obtain. She has fully supported her fees and expenses with detailed time records and sworn declarations attesting to the necessity of that work. In attempting to contest Plaintiff's fees, Defendants fail to rebut that evidence with evidence of their own, as they are required to do. Instead, they assert what are primarily global and unsupported objections to Plaintiff's counsel's overall time in the case and urge the Court to slash the fee request by at least seventy-five percent. Neither legal precedent nor the factual history of this case support Defendants' position. Accordingly, Plaintiff renews her request that this Court award $2,854,507.23 in reasonable attorneys' fees and expenses, exclusive of Plaintiff's separately-filed Bills of Costs. An updated Appendix summarizing the claimed fees and expenses is also attached to reflect additional work by Plaintiff's counsel since September 30, 2021. *See* Supp. Decl. of Amy Whelan filed herewith.

ARGUMENT

I. Defendants' Proposed Arbitrary Reductions Are Unsupported by Evidence and Prohibited by Controlling Law

A. Defendants' objections fail to rebut Plaintiff's evidence

In moving for fees, Plaintiff bears the burden of establishing the reasonableness of the hours claimed by submitting adequate documentation of the hours claimed. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Once Plaintiff does so, the burden shifts to Defendants to contest Plaintiff's fees through admissible, probative evidence. *See Toussaint v. McCarthy*, 826 F.2d 901, 904 (9th Cir. 1987); *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1993).

Here, Plaintiff filed sworn declarations by each law office sponsoring every timekeeper's detailed time records and expenses incurred litigating the case. In response, Defendants failed to submit *any* admissible evidence to support their objections. The only "evidence" Defendants

provide are the hourly rates that their own law offices charged the state[1]—evidence that is irrelevant because the PLRA establishes Plaintiff's counsel's baseline rates. In lieu of submitting evidence, Defendants allege generally, and without support, that the case was "overstaffed," that unidentified time entries were "unreasonably excessive or duplicative, redundant, or otherwise unnecessary," and that Plaintiff engaged in block billing (without identifying a single example). Dkt. 319 at 16-23. These "[c]onclusory and unsubstantiated objections" are insufficient to challenge Plaintiff's evidence in support of fees. *Lucas v. White*, 63 F. Supp. 2d 1046, 1057-58 (N.D. Cal. 1999) (awarding full fees where defendant made no objection to the documentation, "[s]ince defendants have not supported these objections (save one), with any declaration or other supporting evidence, they fail on the merits given the record before the Court."). *Id.* at 1058.

Defendants do not provide any evidence that Plaintiff's hours are "facially unreasonable and not proportional to the needs and nature of this case." Dkt. 319 at 17. They include 13 bullet points about Plaintiffs' time runs (not including sub-bullet points) that object to 6,418.3 hours of time even though Plaintiff's fee request includes only 5,897.8 hours. *Id.* at 18-21. In one example, Defendants object that "six different attorneys" spent 228.1 hours on the injunction motion between 4/11/18 and 6/1/18. But the six attorneys Defendants identify actually spent just over 100 hours on that motion, not 228.1. Moreover, most of that work (78.5 hours) was done by Ms. Shanbhag(Dkt. 315-4 at 51-52), with the other attorneys spending 1-13 hours each. Dkt. 315-3 at 111 (Minter), 112-113 (Wilensky), and 125 (Chen); Dkt. 315-5 at 17 (Ferguson) and 30 (Durham). Defendants also characterize Plaintiff as using too many attorneys and firms for the case by highlighting and bolding the fact that there were "**19 different attorneys**" from "**six different law**

[1] Notably, Defendants fail to provide their own billing records, or even the total number of their hours, or information about whether their fee arrangements include incentives or other forms of compensation. *See, e.g.*, Dkt. 315-8 (Belodoff Decl.) at 21 and Ex. B (explaining City's fee arrangement in *Martin v. City of Boise*, including a possible fees multiplier for defense counsel).

firms. *Id.* at 17. In fact, the vast majority of the work—4,314 out of the claimed 5,897.8 hours—was done by just three attorneys: Ms. Rifkin (2370.7 hours), Ms. Whelan (808.4 hours), and Ms. Shanbhag (1134.9 hours). That three attorneys did nearly 75 percent of the work on the case shows that Plaintiff's counsels staffed the case efficiently and without duplication. None of these objections supply evidence and all of them fail to provide the Court with helpful information beyond the detailed time runs Plaintiff has already submitted. Objecting to all of Plaintiff's time is akin to objecting to nothing at all—and provides virtually no assistance to the reviewing Court. *See, e.g.*, *Parsons v. Ryan*, 949 F.3d 443, 462 (9th Cir. 2020), *cert. denied sub nom. Shinn v. Jensen*, 141 S. Ct. 1054 (2021) (reprimanding Defendants for their "blanket objections against nearly all of Plaintiffs' [time] entries").

Defendants' objections to Ms. Rifkin's time, the lead attorney on the case, are also misplaced. That Ms. Rifkin billed between 15.7 and 20.5 hours on trial days, when she was lead counsel and responsible for most direct and cross-examinations, is unremarkable. Dkt. 319 at 20. That is the very nature of trial work, which consumes virtually every minute of counsel's time. Defendants also object that "the vast majority of work billed on the case was done by partner-level attorneys and at partner-level rates." *Id.* at 22. As an initial matter, this objection shows that Defendants are fully aware how efficiently Plaintiff staffed the case despite their prior objections to the contrary. But on a more basic level, it makes little sense. There are no "partner level rates"—there is one PLRA baseline attorney rate that applies to every attorney biller, regardless of their status or experience. Ms. Rifkin's work is thus a cost-saver for Defendants—they receive the efficiency benefit of a highly experienced attorney for the same rate as an attorney with far less experience who likely would have spent far more time on same tasks. Paradoxically, when a less-experienced attorney did do work on the case, Defendant objected to that as well. *Id.* at 19 (objecting to the "close to 40 hours" Ms. Shanbhag spent preparing for a key deposition).

Defendants also object to hours that Plaintiff has already removed, including Alex Chen's travel to the injunction hearing. *Id.* at 18. Plaintiff subtracted that time from the fees requested (in addition to Mr. Chen's actual attendance at the hearing), as is evident from the time records. Dkt. 315-3 at 128. Similarly, Defendants object to "73 hours" related to "media" in the case even though Plaintiff has already removed most of that time, leaving only the media work by local counsel[2] and a small amount of time necessary to obtain documents Defendants disclosed to the media, but not Plaintiff. Defendants claim Plaintiff has "numerous time entries" that are block billed, never identify which ones they mean, and also object to entries by Dan Stormer and Jessica Valdenegro as "vague." Dkt. 319 at 21-22 ("directing" the Court to HSRD's entire time exhibit). Many of those entries are not vague and the work is also apparent from the dates the work was performed or based on other timekeeper's entries. More importantly, however, even if a few entries are "vague," Defendants fail to explain why reducing them by 70 percent or more is warranted. *See, e.g., Pierce v. Cty. of Orange*, 905 F. Supp. 2d 1017, 1029 (C.D. Cal. 2012) (finding reductions based on "vague" entries arbitrary and without reason). Defendants also object to counsel's "reviewing releases in an unrelated Hep-C case" without explaining where those entries are or who made them. In fact, Ms. Rifkin spent .5 hours on this issue, *see* Dkt-315-2 at 70 of 74, which was necessary to ensure that the settlement agreement from another lawsuit (in which Plaintiff is a class member) did not inadvertently waive any of Ms. Edmo's rights to injunctive or other relief in this case. Defendants also object to counsel's time traveling to Idaho, Dkt. 319 at 18, even though such time is compensable, *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1216 (9th Cir. 1986), and was required for key events in the case such as the trial, depositions, and meetings with the client.

[2] *See Gilbrook v. City of Westminster*, 177 F.3d 839, 877 (9th Cir. 1999) (media time compensable for successful civil rights litigants when that work is "directly and intimately related to the successful representation of a client."). Given the Governor's politicization of this case in the media, it was necessary for local counsel to represent Ms. Edmo's voice in that public discussion.

All of that work was reasonably incurred to prove an actual violation of Ms. Edmo's rights.

B. Defendants' Proposed Percentage Reductions Based on Their "Partial Success" Arguments are Contrary to Supreme Court and Ninth Circuit Law

Defendants argue that because Plaintiff did not prevail through a decision on the merits of each of the original claims against every named Defendant, her fees and costs should be slashed. These arguments contravene applicable law and as a practical matter, make no sense in this case where nearly all of Plaintiff's counsel's time was indisputably spent proving her constitutional violation, enforcing the injunction, and defending it on appeal. As has been true for decades, "[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised." *Hensley*, 461 U.S. at 440. This is because "[m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Id.* at 435. Where the plaintiff presents different claims for relief that "involve a common core of facts" or are based on "related legal theories," the district court "should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Id.*

Defendants nevertheless argue that because "Plaintiff did not prevail on several claims and several individual defendants were dismissed, [her] fees and costs cannot all be construed as 'directly and reasonably incurred in proving an actual violation of the plaintiff's rights' under the PLRA." Dkt. 319 at 14. But this argument only makes sense if Plaintiff's counsel's work on the case was, in fact, devoted to losing claims and those losing claims were unrelated to the winning one. *Rodriguez v. Cty. of Los Angeles*, 96 F. Supp. 3d 1012, 1024-25 (C.D. Cal. 2014), *aff'd*, 891 F.3d 776 (9th Cir. 2018) ("Plaintiffs are not required to succeed on all claims against all Defendants to demonstrate full success or excellent results…The correct analysis hinges on whether Plaintiffs'

work pertaining to unsuccessful motions or non-liable Defendants was work related to Plaintiffs' ultimate success."); *see also Balla v. Idaho*, 677 F.3d 910, 919 (9th Cir. 2012) (holding that the PLRA's "'prov[e] an actual violation' requirement is satisfied when the prisoners have…won an injunction."). That is the opposite of what happened here, where Plaintiff moved for expedited injunctive relief on three related claims, won an injunction on her Eighth Amendment claim, and then focused almost exclusively thereafter on enforcing that order and defending it before both the Ninth Circuit and the U.S. Supreme Court. As is clear from Ms. Rifkin's declaration and the detailed time sheets submitted in the case, Plaintiff's work on the case breaks down generally as follows: (1) 2017-June 1, 2018 (work on amended complaint, successfully opposing defendants' dispositive motions, and preparing motion for injunction based on three related claims); (2) June 2018-December 2018 (discovery, trial, and post-trial work for injunction); (3) December 2018-October 13, 2020 (work enforcing the injunction related to the 8th Amendment violation and defending it before the 9th Circuit and U.S. Supreme Court); (4) October 14, 2020-June 30, 2021[3] (work resolving remaining issues in case, including for court-ordered mediation and settlement); (5) July 1, 2021-present (Plaintiff's work on attorneys' fees and costs).[4]

Despite the reasonableness of the work reflected in counsel's detailed time runs, Defendants propose that this Court cut Plaintiff's fees by variously figured pro rata percentages of "at least 70%," (Dkt. 319 at 16), award only "14% of the fees and expenses sought (1 of 7 claims),[5]" (*id.* at 13), award "33% of the fees and expenses (1 of 3 claims) (*id.* at 14), or award "40% of the fees and expenses sought (4 of 10 defendants)" (*id.*). The Supreme Court and Ninth Circuit prohibit

[3] Notably, this Court stayed all remaining claims from July 19, 2019, to January 4, 2021. ECF 208 & 299. As the history of this case and Plaintiff's detailed time runs reflect, this means that Plaintiff's counsel did not work on those claims, with the exception of including them in the complaint and a minimal amount of time drafting discovery prior to the stay.
[4] It is well-established that Plaintiff is entitled to fees-on-fees. Dkt. 315-5 at 10.
[5] Plaintiff alleged six causes of action, not seven as Defendants contend. *See* Dkt. 172.

this crude mathematical approach except in the most extreme of cases. In *Hensley*, the Supreme Court rejected the idea that counsel should be compensated based on a comparison of claims sought versus claims won: "[s]uch a ratio provides little aid in determining what is reasonable in light of all the relevant factors." 461 U.S. at 438 n. 11. The Ninth Circuit also expressly rejects this type of percentage reduction, holding, "[t]his makes no practical sense. We cannot imagine why a lawyer would allocate equal hours to each claim." *McGinnis v. Ky. Fried Chicken*, 51 F.3d 805, 808 (9th Cir. 1994). Indeed, following *Hensley*, the Ninth Circuit and its sister courts have held that percentage reductions are "controversial" and must receive close scrutiny. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 (9th Cir. 2001); *Gates v. Deukmejian*, 987 F.2d 1392, 1400 (9th Cir. 1992). A court must give a "clear and concise explanation" not only as to why it chose to use an across-the-board reduction, but also why it chose the particular percentage. *Ferland*, 244 F.3d at 1151. District courts must consider "the relative importance of the various issues, the interrelation of the issues, the difficulty in identifying issues [and] the extent to which a party prevails on various issues." *Rutherford v. Pitchess*, 713 F.2d 1416, 1422 (9th Cir. 1983) (quoting *Hensley*, 461 U.S. at 438). Any fee award, then, must consider all circumstances surrounding the litigation, and the relative importance of the claims.

Defendants' proposals lack any of these required elements. Defendants assume that counsel spent an equal amount of time on each of Plaintiff's claims—an assumption contradicted by even the most cursory review of counsel's time runs, and the history of this case. For example, although Plaintiff's counsel spent virtually no time on the ADA and Rehabilitation Act claim (which was not a basis of the motion for injunction), Defendants' crude approach puts that claim on par with the successful 8th Amendment claim (Defendants treat each of these claims, variously, as one-seventh, one-third, or one-fourth in their differing proposals). Defendants also fail to explain why such extreme percentage cuts should apply equally to different stages of the litigation, when later

stages of the litigation no longer even included the original claims.[6] Apart from a small amount of work on the amended complaint and opposing Defendants' initial dispositive motions, virtually *all of the work* on the case related to three of Ms. Edmo's claims: the 8th Amendment, 14th Amendment sex discrimination claim and ACA claim. Moreover, since this Court ruled on December 13, 2018, that Ms. Edmo prevailed on her 8th Amendment claim, virtually all of her counsel's work was devoted to enforcing and defending that order before three different courts. In addition, all of Plaintiff's work on the discovery, pre-trial, and trial phases of the litigation—primarily June 2018 to October 2018, focused entirely on the three interrelated claims. In other words, while nearly 100% of Plaintiff's post-trial work was spent on the 8th Amendment claim (including every hour spent by the attorneys at Cooley LLP and MacArthur Justice Center/Jenner), and 100% of the pre-trial and trial work was spent on the three related claims at issue in the injunction, Defendants urge cuts of 60-86%. This is arbitrary, unreasonable, and prohibited by both Supreme Court and Circuit precedent.

Nor do the cases Defendants cite support their argument. *Johnson v. Breeden*, an out-of-circuit case, stands for the uncontroversial point that fees awarded must be "directly and reasonably incurred in proving an actual violation," as stated in the PLRA. 280 F.3d 1308, 1327 (11th Cir. 2002). Notably, when the Circuit Court remanded that case to the District Court to reassess what work was compensable, it acknowledged that "some of the same time spent and expenses incurred in connection with defendants and claims on which Johnson was not successful also may have been directly and reasonably spent and incurred in proving the claims against defendants for which he was successful." *Id.* In other words, even if this Court were inclined to follow a non-binding, out-of-circuit decision, *Johnson* affirms longstanding precedent that where claims are related or

[6] Defendants never explain, or provide authority, supporting similar cuts to Plaintiff's expenses.

intertwined, fees should not be reduced. *Watts v. Dep't. of Corr.*, is inapplicable because that Court analyzed Plaintiff's counsel's fees not as a prevailing party (which Ms. Edmo is here), but pursuant to the entirely different "catalyst" theory analysis. No. 1:03-CV-53650, 2007 WL 1752519, *2-3 (E.D. Cal. June 15, 2007).[7] *Smith v. Beauclair*, No. CV03-222-C-EJL, 2010 WL 4641333, at *3-5 (D. Idaho Nov. 4, 2010), applied longstanding precedent that "[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fees reduced simply because plaintiff did not prevail on all claims." *Id.* at *2. In *Smith*, the Plaintiff achieved only "partial or limited success," leading the court to apply a percentage reduction because it was unable to "separate the legal hours spent on the unsuccessful claims from those spent on the successful claims based on the detailed time sheets submitted." Here, Plaintiff is not a partially successful party. She achieved 100 percent of the relief she sought in the case—an injunction requiring Defendants to treat her gender dysphoria—and then resolved all remaining claims through settlement. Plaintiff set out to obtain an injunction "requiring Defendants to provide her necessary treatment, including surgery, to alleviate her ongoing and needless pain and suffering from her serious, but treatable, medical condition of gender dysphoria," Dkt. 111 at 15, and that is precisely what she obtained.[8]

II. The PLRA Does not Prohibit Multipliers

As the Ninth Circuit reiterated recently, the PLRA "authorizes multipliers to the base hourly rate above the cap set by 42 U.S.C. § 1997e(d)(1)." *Parsons v. Ryan*, 949 F.3d 443, 466 (9th Cir. 2020), *cert. denied sub nom. Shinn v. Jensen*, 141 S. Ct. 1054 (2021); *see also Kelly v.*

[7] Moreover, because only 100 hours were at issue in the case, the Magistrate presumably reached the 50 percent reduction figure after reviewing them and not because of an arbitrary percentage reduction. *Id.* at *3 (finding "50% of counsels' time was directly and reasonably incurred in proving an actual violation of Plaintiff's rights" which equaled "48.5 hours").

[8] The trial transcripts and post-trial briefs also make clear that this entire case centered around Ms. Edmo's Eighth Amendment claim. *See, e.g.*, Dkt. 137 at 9-39 (opening arguments).

Wengler, 822 F.3d 1085, 1093, 1102-06 (9th Cir. 2016). Despite this clear precedent, and the Supreme Court's denial of *certiorari* related to this exact question in January of 2021,[9] Defendants contend that the PLRA abolished multipliers. No Circuit Court in the country has interpreted the PLRA to preclude multipliers, and district courts outside the Ninth Circuit have awarded them. *See, e.g., Ginest v. Bd. of Cnty. Comm'rs of Carbon Cnty.*, 423 F. Supp. 2d 1237, 1241 (D. Wyo. 2006) (awarding multiplier under PLRA); *Skinner v. Uphoff*, 324 F. Supp. 2d 1278, 1287- 88 (D. Wyo. 2004) (same); *Cole v. Collier*, No. 4:14-CV-1698, 2018 WL 2766028, at *15 (S.D. Tex. June 8, 2018) (same).

Defendants acknowledge that *Murphy v. Smith* "did not expressly reject discretionary fee enhancements" under the PLRA, but nevertheless contend that *Murphy*, along with Circuit decisions that *pre-date Murphy*, stand for the proposition that the PLRA replaced the lodestar method established under § 1988, "including any multiplier." Dkt. 319 at 24-25. As noted above, the Ninth Circuit rejected this exact argument in *Parsons*, holding that *Murphy* did no such thing. *Parsons*, 949 F.3d at 466 n.14 ("*Murphy* concerned only the interpretation of 42 U.S.C. § 1997e(d)(2), and it did not disapprove the lodestar method or fee enhancements in any way, despite explicitly discussing both the overall 'surrounding structure of 1997e(d)' and the lodestar method in particular."). *Murphy* recognized, for instance, that the lodestar method developed under 42 U.S.C. § 1988 is the "guiding light of our fee shifting jurisprudence." *Murphy*, 138 S. Ct. at 789 (quoting *City of Burlington* v. *Dague*, 505 U.S. 557, 562 (1992)). *Murphy* also specifically rejected one proffered argument because it conflicted with § 1988's traditional lodestar analysis. *Id.* at 790 ("…Mr. Murphy effectively seeks to (re)introduce into § 1997e(d)(2) exactly the sort of unguided

[9] The question posed for *certiorari* review by the prison defendants in *Parsons* was "whether the PLRA leaves any room for a district court to enhance a fee award in prisoner cases beyond what it statutorily prescribes." *Shinn v. Jensen*, No. 20-360, Pet. for Writ of Certiorari (Sept. 14, 2020).

and freewheeling choice…that this Court has sought to expunge from practice under § 1988.").[10] Rather, the PLRA and § 1988 work in conjunction, as Defendants' own arguments show when they repeatedly cite § 1988 cases throughout their brief. If Congress intended to *replace* Section 1988 with the PLRA, it would have expressly said so (and at least one court would have so held in the 25 years since its enactment).

Moreover, the fact that the PLRA establishes the baseline hourly rate does not fundamentally alter the lodestar analysis. Prior to the PLRA, the hourly rate was "'guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.'" *Webb v. Ada County*, 285 F.3d 829, 840 (9th Cir. 2002) (quoting *Chalmers*, 796 F.2d at 1210-11). Following enactment of the PLRA, the PLRA establishes the baseline hourly rate, 42 U.S.C. § 1997e(d)(3), and codifies *Hensley's* compensable hours to those "reasonably incurred." *See* 42 U.S.C. § 1997e(d)(1) (limiting fees to those "directly and reasonably incurred in proving an actual violation of the plaintiff's rights" and "proportionally related to the court ordered relief" or "directly and reasonably incurred in enforcing the relief"). The remainder of the lodestar analysis—(1) multiplying the PLRA rate by the "reasonably incurred" hours; and (2) adjusting the lodestar upward or downward, *Hensley*, 461 U.S. at 433-34, remains the same.

The PLRA did not even address, much less modify, the second step of the lodestar analysis regarding upward or downward departures. Indeed, Defendants ask this Court to slash Plaintiff's fees and expenses by 70 percent—the inverse of a multiplier—without explaining why the Court has no discretion to enhance fees yet somehow retains it to reduce them.

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[10] *Boivin*, *Walker*, and *Shepherd* are similarly off-topic. They concern the separate PLRA provision governing monetary judgments. *Boivin v. Black*, 225 F.3d 36 (1st Cir. 2000); *Walker v. Bain*, 257 F.3d 660 (6th Cir. 2001); *Shepherd v. Goord*, 662 F.3d 603 (2d Cir. 2011). Indeed, two of the courts specifically noted that their rulings were limited to cases involving monetary damages. *Shepherd*, 662 F.3d at 607 n.4; *Boivin*, 225 F.3d at 41 n.4.

III. A Multiplier is Warranted in this Case

Plaintiff fully supported the reasonableness of a multiplier in this case in her opening brief and Defendants' arguments against one are unpersuasive. They argue Plaintiff has not established the customary fee in similar litigation based on irrelevant, personal attacks against Mr. Belodoff and claims that Ms. Ferguson's Boise rates are "conclusory."[11] Dkt. 319 at 28-29. Ms. Ferguson provided sworn testimony about her rate and provided citations to cases where her firm's rates were actually awarded or settled, none of which is "conclusory." In contrast, the cases Defendants cite to purportedly establish rates "substantially lower" are more than five years old. *Id.* at 29.

In trying to minimize the exceptional results and Plaintiff's counsel's skills, *Id.* at 32-35, Defendants ignore that Plaintiff obtained the first court-ordered surgery for an incarcerated transgender person and an appellate decision that has already been cited more than 200 times by other courts and law review articles. Rifkin Decl. ¶ 44. Similarly, Defendants understate the time demands imposed on Plaintiff's counsel, ignoring that the case was litigated on an expedited basis, often at the same time in multiple courts. Defendants filed three separate appeals in the Ninth Circuit, a request for rehearing *en banc*, a petition for *certiorari* to the Supreme Court, and multiple requests for stays in the District Court, Ninth Circuit, and Supreme Court—all the while continuing to contest their obligations to satisfy the injunction in the District Court.

Defendants also make the bizarre argument that Plaintiff's attorneys were somehow less skilled and effective because, even though they set out to meet a lower preliminary injunction

[11] Defendants fail to explain how Mr. Belodoff's substantive work in one isolated case has anything to do with his sworn, uncontested testimony about market rates in Boise. Nor are Defendants correct that market rates must related only to "similar litigation." Dkt. 319 at 28. *Rodriguez*, 96 F. Supp. 3d at 1023 ("reasonable rates are not based only on rates offered in similar civil litigation but rather comparison 'extends to all attorneys in the relevant community engaged in equally complex Federal litigation, no matter the subject.'") (internal citations omitted).

standard, at trial they actually *proved* that Defendants violated Ms. Edmo's right to be free from cruel and unusual punishment. Dkt. 319 at 34. Regarding the undesirability of the case, Defendants make unsupported claims that the case "will be professionally beneficial to [Plaintiff's counsel] for years" and cannot be "anything but desirable to NCLR." *Id.* at 37. This reasoning would vitiate this prong of the multiplier analysis, redefining successful litigation as "desirable" no matter what, and holding Plaintiff's victory against her counsel. In fact, this case was so unpopular and challenging that Plaintiff's counsel received harassing emails and phone calls and no attorney would even consider litigating it without outside counsel. Dkt. 315-5 at ¶¶ 19, 31-33.

IV. Plaintiff Should Be Awarded Statutory Costs and Expenses

Plaintiff filed her cost bill in accordance with Local Civil Rule 54.1(a)(1) using the Court's local form and itemizing and documenting costs. Dkt. 312. The Bill of Costs contains counsel's signature, and this declaration: "I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed." *Id.* This fully satisfies the requirement that costs be certified by counsel and correct. Defendants' citation to *Blaine Larsen Processing, Inc. v. Hapco Farms, Inc.*, No. 97-0212-E-BLW, 2000 U.S. Dist. LEXIS 22870 (D. Idaho Aug. 9, 2000), is not to the contrary since the Court declined the bill of costs because it lacked any certification of counsel and even the late affidavit failed to comply with the Local Rule. *Id.* at *40-41.

Plaintiff concedes that she did not meet and confer with Defendants prior to filing her Bill of Costs. No Idaho Court has denied statutory costs on this basis, however, and other district courts have overruled such objections, particularly where, as here, "all of the costs requested by Plaintiff[] are allowable." *Auld-Susott v. Galindo*, No. 16-450, 2019 WL 2372891, at *1-2 (D. Haw. Mar. 25, 2019), *report and recommendation adopted*, 2019 WL 1746569 (D. Haw. Apr. 18, 2019). As for substantive objections, Defendants object only to costs for copies of papers and exhibits (Exhibits

13-17). Under Rule 54, a party may recover the "[c]ost of exhibits attached to documents required to be filed and served; exemplification fees; [and] and copies of preparing clerks record on appeal." Dkt. 312. Exhibit 13 reflects $1,513.52 in costs to prepare exhibit binders required by the Court for the three-day evidentiary hearing. Exhibits 14, 16, and 17, are $321.17, $45.15, and $50.94, respectively, which Plaintiff incurred preparing the clerks' record on appeal. Defendants claim Plaintiff seeks costs for "document production" in Exhibit 14. The invoice reflects Plaintiff paid $321.17 for four copies of the supplemental excerpts of record bound with white covers as ordered by the Ninth Circuit. Dkt. 312-2, Ex. 14 at 2; Ninth Circuit Appeal No. 19-35017, Dkt. No. 35.

Defendants object to Plaintiff's non-statutory expenses as unsupported by "documentations, such as receipts or invoices." Plaintiff has submitted sworn affidavits supporting those expenses, explaining exactly what they were for, and attesting to their accuracy. There is no requirement that she do more and Defendants' cited cases do not hold otherwise.[12] Dkt. 319 at 40. Defendants also fail to account for reductions Plaintiff has already made to her expenses. They assert that almost "$30,000 in expert invoices for Randi Ettner are claimed" in Plaintiff's motion when those costs have already been removed. *See* Dkt. 315-3 (Whelan Decl.) at Ex. C (listing "billed cost" for costs associated with Dr. Ettner at "$0.00.").

CONCLUSION

For these reasons, Plaintiff requests that the Court award $2,854,507.23 in reasonable attorneys' fees and expenses.

Respectfully Submitted this 13th day of December, 2021.

FERGUSON DURHAM
HADSELL STORMER RENICK & DAI LLP
NATIONAL CENTER FOR LESBIAN RIGHTS
RIFKIN LAW OFFICE

[12] Of course, if the Court needs additional information about any expenses, Plaintiff will promptly provide it.

By: /s/ *Amy Whelan*
Amy Whelan
Attorneys for Plaintiff

APPENDIX A

UPDATED APPENDIX

Summary of Claimed Fees and Expenses

Total Fees By Firm

FIRM/ORG.	HOURS	LODESTAR	LODESTAR PLUS 2.0 MULTIPLIER
National Center for Lesbian Rights (PLRA)	1305.80 hrs	$ 303,598.50	$ 607,197.00
NCLR Law Student - $220/hr	39.10 hrs	$ 8,602.00	$ 17,204.00
NCLR Paralegal Assistant - $175/hr	46.50 hrs	$ 8,137.50	$ 16,275.00
Cooley LLP (PLRA)	370.30 hrs	$ 86,094.75	$ 172,189.50
MacArthur Justice Center/Jenner (PLRA)	47.00 hrs	$ 10,927.50	$ 21,855.00
Ferguson Durham, PLLC (PLRA)	313.60 hrs	$ 72,912.00	$ 145,824.00
Hadsell Stormer Renick & Dai (PLRA)	1310.10 hrs	$ 304,598.25	$ 609,196.50
HS&R Law Clerk - $175	20.20 hrs	$ 3,535.00	$ 7,070.00
HS&R Law Clerk - $210	68.30 hrs	$ 14,684.50	$ 29,369.00
HS&R Law Student - $220	63.70 hrs	$ 14,014.00	$ 28,028.00
Rifkin Law Office (PLRA)	2383.70 hrs	$ 554,210.25	$ 1,108,420.50
Totals	**5968.30 hrs**	**$ 1,381,314.25**	**$ 2,762,628.50**

Total Expenses By Firm

FIRM/ORG.	EXPENSES
National Center for Lesbian Rights	$ 14,351.74
Cooley LLP	$ 1,327.40
MacArthur Justice Center/Jenner	$ -
Ferguson Durham, PLLC	$ 272.42
Hadsell Stormer & Renick, LLP	$ 55,585.39
Hadsell Stormer Renick & Dai - Prior Bills of Costs	$ 19,215.94
Rifkin Law Office	$ 1,125.84
Total	**$ 91,878.73**

Grand Total

Grand Total	$ 2,854,507.23

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION, ET AL.

Defendants.

Case No.: 1:17-cv-00151-BLW

SUPPLEMENTAL DECLARATION OF AMY WHELAN IN SUPPORT OF PLAINTIFF'S MOTION FOR REASONABLE ATTORNEYS' FEES AND EXPENSES

I, Amy Whelan, declare that the following is true and correct:

1. I am an attorney admitted *pro hac vice* before this Court and represent the Plaintiff, along with co-counsel, in this action. I am a member in good standing of the California State Bar and am admitted to practice law in California state and federal courts, several U.S. Courts of Appeals, and the Supreme Court of the United States. I have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. This Declaration is filed concurrently with Plaintiff's Reply in Support of her Motion for Reasonable Attorneys' Fees and Expenses.

3. Attached hereto as **Exhibit A** is a true and accurate transcription of the supplemental time Plaintiff's counsel has spent on the case since October 1, 2021. This additional time brings my total hours in the case to 860.4 (from the 808.4 hours reflected in our opening brief), Ms. Rifkin's total hours to 2383.7 (from the 2370.7 hours reflected in our opening papers), and Ms. Shanbhag's total hours to 1140.4 (from the 1134.9 hours reflected in our opening papers).

4. Depending on the amount of time necessary to defend Plaintiff's entitlement to reasonable fees and costs, Plaintiff's attorneys expressly reserve the right to update these totals. Should additional work be necessary beyond the reply brief, Plaintiff's attorneys expressly reserve their right to supplement this fee motion at an appropriate time.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed in San Francisco, California on this 13th day of December 2021.

Amy Whelan
Attorneys for Plaintiff

EXHIBIT A

Edmo v. IDOC
Amy Whelan Supplemental Time since 9/30/2021

DATE	DESCRIPTION	HOURS BILLED	HOURS CHARGED	BILLING JUDGMENT REDUCTION
10/04/2021	edited DF decl ISO fees	0.10	0.10	0.00
10/04/2021	edited LR decl ISO fees	2.50	2.50	0.00
10/04/2021	edited Hartnett and Rao decls ISO fees	0.60	0.60	0.00
10/04/2021	email from DF re Belodoff decl ISO fees	0.10	0.10	0.00
10/06/2021	TC with LR re fee motion and all supporting evidence	1.20	1.20	0.00
10/06/2021	prep of MPA ISO fees and incorporation of info from decls	2.60	2.60	0.00
10/06/2021	email to team re update re fees motion	0.20	0.20	0.00
10/06/2021	email from DF re additional time for case	0.10	0.10	0.00
10/07/2021	email to MB re LR time exhibit	0.10	0.10	0.00
10/07/2021	continued prep of MPA ISO fees	1.60	1.60	0.00
10/12/2021	email to B. Anderson re finalizing Hartnett decl and exhibits	0.10	0.10	0.00
10/13/2021	finalized Rao decl ISO Fees	0.30	0.30	0.00
10/13/2021	finalized Hartnett decl ISO fees	0.50	0.50	0.00
10/13/2021	edited Hartnett decl ISO fees	0.50	0.50	0.00
10/13/2021	prep of add'l NCLR time through 9/30 for fee motion exhibit and email to legal assistant re adding same	0.30	0.30	0.00
10/14/2021	emails with DF re fee motion	0.10	0.10	0.00
10/14/2021	edited DF decl ISO fees and proof of exhibits to same	0.70	0.70	0.00
10/14/2021	proof of exhibits to fee motion	0.70	0.70	0.00
10/14/2021	TC with B. Anderson re Cooley time and expenses	0.10	0.10	0.00
10/14/2021	edited Hartnett decl re fees and email B. Anderson re same	0.10	0.10	0.00
10/14/2021	edited Belodoff decl ISO fees	0.10	0.10	0.00
10/14/2021	edited LR decl ISO fees	0.70	0.70	0.00
10/15/2021	proof of LR time exhibit	0.30	0.30	0.00
10/15/2021	email B. Anderson re Hartnett decl ISO fees	0.10	0.10	0.00
10/20/2021	prep of my Decl ISO fees	2.80	2.80	0.00
10/20/2021	finalized fee motions for filing, all exhibits, and appendix for court	2.80	2.80	0.00
10/21/2021	TC with LR re fee motion	0.20	0.20	0.00
11/29/2021	email to SS re bill of costs issue for fee reply	0.10	0.10	0.00
11/29/2021	review defs' opp to fee motion and decls ISO same, and motion to submit add'l pages re same	1.00	1.00	0.00
11/29/2021	TC with Shriya re review of defs' objections to plaintiff's counsel's time for reply brief ISO fees	0.30	0.30	0.00
11/30/2021	email from/to LR re strategy for fee reply	0.20	0.20	0.00
12/02/2021	Prep of reply brief ISO fee motion; review defs' opp for same	1.10	1.10	0.00
12/06/2021	Prep of reply brief ISO fee motion; LR re same	6.70	6.70	0.00
12/06/2021	Prep of reply brief ISO fee motion; LR re same	6.90	6.90	0.00
12/08/2021	prep of reply ISO fees	7.80	7.80	0.00
12/09/2021	prep of reply ISO fees	0.90	0.90	0.00
12/12/2021	emails to team re reply ISO fees	0.20	0.20	0.00
12/12/2021	prep of reply ISO fees	2.30	2.30	0.00

Edmo v. IDOC
Amy Whelan Supplemental Time since 9/30/2021

DATE	DESCRIPTION	HOURS BILLED	HOURS CHARGED	BILLING JUDGMENT REDUCTION
12/12/2021	prep of motion to exceed page limit for fees reply; LR re same	0.70	0.70	0.00
12/13/2021	Prep supp Whelan decl ISO fee reply and exhibit to same			0.00
12/13/2021	finalized reply brief ISO fee motion and updated appendix	3.10	3.10	0.00
12/13/2021	TCs with LR re fee reply	0.70	0.70	0.00
12/13/2021	review of info from DF re fee reply	0.10	0.10	0.00
12/13/2021	prep of supp. fees for reply ISO fee motion	0.40	0.40	0.00
	Totals (in hours)	**52.00**	**52.00**	**0.00**

Edmo v. IDOC

Lori Rifkin Supplemental Time since 9/30/21

DATE	DESCRIPTION	HOURS BILLED	HOURS CHARGED	BILLING JUDGMENT REDUCTION
10/01/21	review AW emails re edits to fee motion & respond	0.20	0.20	0.00
10/04/21	review team emails re mot for fees & decs in support; email exch w AW re drafts & mtg	0.20	0.20	0.00
10/06/21	mtg w AW re motion for fees & declarations in support	1.20	1.20	0.00
10/06/21	review AW edits & emails re fee motion & attorney time in prep for mtg w AW	0.40	0.40	0.00
10/07/21	review & edit Cooley draft decl iso motion	0.20	0.20	0.00
10/07/21	review & edit Jenner/MJC draft decl iso motion	0.20	0.20	0.00
10/07/21	email to AW re fee motion edits & billing records	0.40	0.40	0.00
10/07/21	revise my decl iso fee motion	0.20	0.20	0.00
10/07/21	prep & send AW recent time entries for fee motion	0.20	0.20	0.00
10/11/21	email exch to client ree finalizing issues in case	0.20	0.20	0.00
10/11/21	revies & revise new draft declaration iso fees motion & send to AW	1.00	1.00	0.00
10/14/21	email exch w AW & team re motion for fees/declarations	0.10	0.10	0.00
10/14/21	review edits to declarations iso fees motion & email exchs w AW re same	0.10	0.10	0.00
10/15/21	email exch w Larry @ HSRD re 2017 time runs for Edmo	0.10	0.00	-0.10
10/15/21	email exch w AW re declarations/time runs/filing fee motion	0.20	0.20	0.00
10/18/21	emails to Ct chambers & clerk re proposed order/fees motion & AW re same	0.20	0.20	0.00
10/19/21	emails w client & AW re final issues in case	0.20	0.20	0.00
10/20/21	email AW re fee motion	0.10	0.10	0.00
10/20/21	prep for conf w/ client re fee motion	0.20	0.20	0.00
10/20/21	emails to client re setting up phone conf re settlement & case updates	0.10	0.10	0.00
10/20/21	final review & edit of motion for fees	1.50	1.50	0.00
10/20/21	review & edit AW decl iso fee motion & email to AW re same	0.40	0.40	0.00
10/21/21	phone conf w AW & client re fees motion, status	0.60	0.60	0.00
11/04/21	email exch w client re closing issues in case	0.10	0.10	0.00
11/30/21	reveiw defs' filings in resp to atty fee motion	0.20	0.20	0.00
11/30/21	reveiw defs' filings in resp to atty fee motion & email to AW re reply	0.60	0.60	0.00
11/30/21	email exch w AW re Defs respon to fee mot & reply	0.10	0.10	0.00
12/03/21	email exch w AW re reply ISO fee mot	0.10	0.10	0.00
12/10/21	review draft reply ISO fee motion	1.10	1.10	0.00
12/11/21	review draft reply ISO fee motion	0.30	0.30	0.00
12/11/21	review draft reply ISO fee motion & send to AW	1.20	1.20	0.00
12/13/21	calls with AW re reply iso fees	0.70	0.70	0.00
12/13/21	review filings for reply iso fees & motion to exceed pages	0.50	0.50	0.00
	Totals (in hours)	**13.10**	**13.00**	**-0.10**

Edmo v. IDOC
Shaleen Shanbhag Supplemental Time since 9/30/2021

DATE	DESCRIPTION	HOURS BILLED	HOURS CHARGED	BILLING JUDGMENT REDUCTION
10/06/21	draft/edit bill of costs	1.00	1.00	0.00
10/13/21	edit Stormer decl and exhibits iso fee mtn	3.00	3.00	0.00
10/18/21	edit Stormer decl and exhibits iso fee mtn	0.50	0.50	0.00
12/03/21	research and draft bill of costs section of reply brief	1.00	1.00	0.00
	Totals (in hours)	**5.50**	**5.50**	**0.00**