

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ELIZABETH MIRABELLI, and LORI) Case No.: 23-CV-768-BEN-VET
12 ANN WEST, individually and on behalf)
13 of herself and all others similarly situated,)
14 et al.,,) **ORDER ON ATTORNEYS' FEES**
15) **[ECF No. 323]**
16 Plaintiff,)
17 v.)
18 MARK OLSON, in his official capacity as)
19 President of the EUSD Board of)
20 Education, et al.,)
21 Defendant.)

22
23 Before the Court is Plaintiffs' Motion for Award of Attorney Fees (Doc. No. 323),
24 and Defendants' opposition. (Doc. No. 333). For the reasons set forth below, the Court
25 **GRANTS** Plaintiffs' Motion for Attorneys' fees.

26 **I. BACKGROUND**

27 The Court has presided over this case since its inception three years ago and is well
28 familiar with how it has been litigated by all parties. Plaintiffs, two long time award
winning Christian middle school teachers of schoolchildren in the California public
school system, brought a lawsuit challenging California's "Parental Exclusion Policy" on
constitutional grounds under 42 U.S.C. § 1983, which was filed on April 27, 2023, after

1 the Plaintiffs' request for religious accommodations from Escondido Unified School
2 District ("EUSD") was denied in January 2023. A motion for a preliminary injunction
3 was filed on May 15, 2023, and granted on September 14, 2023. In January 2024, the
4 Court ordered the addition of the Attorney General and State of California as defendants,
5 leading to the filing of a First Amended Complaint. A Second Amended Complaint was
6 filed in August 2024, adding new plaintiffs, employment claims, and class action
7 allegations. (Doc. Nos 133 and 323 at 7.) On December 22, 2025, the Court granted
8 summary judgment in favor of the Plaintiffs and issued a class-wide permanent injunction
9 against the policy. (*Id.* at 10; Doc. No. 307.) The Court denied the State's request for a
10 stay, and the State appealed to the Ninth Circuit, which granted the State the stay it
11 sought. Plaintiffs appealed to the United States Supreme Court, and in a written opinion,
12 the Court reversed the Ninth Circuit.

13 Plaintiffs seek an award of \$4,551,656.63 in attorneys' fees under 42 U.S.C. §
14 1988. (Doc. No. 323 at Jonna Decl., ¶¶ 85-86). The amount is composed of a lodestar of
15 \$4,045,917, reduced by a self-imposed 10% reduction to \$3,641,325, plus a 1.25
16 multiplier.

17 **II. DISCUSSION**

18 **A. Prevailing Party Status**

19 Plaintiffs were successful on summary judgment and achieved a class-wide
20 permanent injunction as well as a declaratory judgment establishing their Parental Rights.
21 The Supreme Court affirmed the injunction. The State has since withdrawn its argument
22 that Plaintiffs were not prevailing parties. (*See* Doc. No. 337.) The Court finds that the
23 Plaintiffs achieved all of their main litigation objectives and are therefore the prevailing
24 party entitled to seek attorney fees from the government defendants.

25 **B. Reasonableness of Hourly Rates.**

26 A prevailing party fee applicant bears the burden of producing satisfactory
27 evidence that the requested hourly fee rates align with those prevailing in the community
28 for similar services by lawyers of reasonably comparable skill and reputation. *Jordan v.*

1 *Multnomah County*, 815 F.2d 1258, 1263 (9th Cir. 1987). As a general rule, the forum
2 district represents the relevant legal community. *Gates v. Deukmejian*, 987 F.2d 1392,
3 1405 (9th Cir. 1992). Fee applicants may provide affidavits of practitioners from the
4 same forum with similar experience to establish the reasonableness of the hourly rate
5 sought. *See, e.g., Mendenhall v. Nat'l Transp. Safety Bd.*, 213 F.3d 464, 471 (9th Cir.
6 2000); *Jones v. Metro. Life Ins.*, 845 F. Supp. 2d 1016, 1024-25 (N.D. Cal. 2012).
7 Plaintiffs submitted time sheets reflecting total hours worked (up to February 2, 2026) of
8 3,807.15 hours. (*See* Doc. No. 323 Ex. 2)

9 Plaintiffs propose hourly rates ranging from \$240/hr for paralegal and law clerk
10 work to \$1,512/hr for Mr. Limandri's work. Plaintiffs argue these rates are reasonable
11 for the San Diego legal market, where this case was litigated and where counsel's firm is
12 located, citing the Real Rate Report and prior court orders approving similar rates in
13 accordance with relevant case law.

14 The State argues that the hours billed are excessive; they cannot recover for media
15 and public relations work, overstaffing, duplicative depositions, excessive document
16 drafting, conferencing, block billing, administrative and clerical work, use of .2-hour
17 minimum billing work, and unadjudicated employment discrimination claims, and the
18 upward adjustment to the lodestar is not warranted. The state relies principally on the
19 declaration of James P. Schratz. (Doc No. 333-2.) However, the court disregards the
20 Schratz opinion because it lacks objectivity, as other courts have mentioned, and because
21 it relies on a large firm / small firm distinction for allowable hourly rates—a distinction
22 the Ninth Circuit Court of Appeals has recently rejected. *See LA Int'l Corp. v. Prestige*
23 *Brands Holdings, Inc.* 168 F.4th 608, 626 (9th Cir. 2026).

24 The Court has considered the Parties' arguments. The Court is also familiar with
25 the prevailing market rates for federal civil rights attorneys in the San Diego, California
26 legal market. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (a court may rely
27 on its own knowledge of prevailing rates). Plaintiffs report that they developed the
28 requested hourly rates for this litigation by taking the rates awarded to them in another

1 case in April 2023, and increasing those awarded rates by 20% to arrive at 2026 rates.
2 Plaintiffs then cross-referenced the resulting rates with the USAO Laffey Matrix, the LSI
3 Laffey Matrix, the Fitzpatrick Matrix, and the 2024 Wolters Kluwer Real Rate Report.
4 Counsel then made various minor revisions, resulting in the rates below. *See* Jonna
5 Decl., ¶¶79-84. Here, Plaintiffs’ counsel’s hourly rates are within the high end for San
6 Diego County; top lawyers statewide charge more. Plaintiffs’ top hourly rate is \$1,512,
7 while Los Angeles, for example, pays up to \$1,975 per hour for defending Palisades Fire
8 lawsuits. *See* Jonna Decl., ¶68 & Ex. 15.

9 The Court finds that Plaintiffs have demonstrated that counsel possesses significant
10 litigation experience in protecting constitutional rights and has provided evidence of prior
11 rate approvals. Accordingly, the Court holds that the requested rates fall within the
12 acceptable range for attorneys of comparable skill and experience in civil rights litigation.

13 C. Reasonableness of Hours Expended

14 Plaintiffs litigated four related constitutional theories—Parental Free Exercise
15 Rights, Teacher Free Exercise Rights, Parental Substantive Due Process Rights, and
16 Educator free speech rights—all aimed at obtaining relief from unconstitutional statewide
17 policies that work an intolerable harm on families with school age children and their
18 teachers, *i.e.*, California’s Parental Exclusion Policies.

19 District courts “must calculate awards for attorneys’ fees using the ‘lodestar’
20 method.” *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir. 2001). The
21 lodestar equals “the product of reasonable hours times a reasonable rate.” *City of*
22 *Burlington v. Dague*, 505 U.S. 557, 559 (1992), with a “‘strong presumption’ that the
23 lodestar represents the ‘reasonable fee’.” *Id.* at 562 (citation omitted).

24 A “reasonable fee” is intended to “induce a capable attorney to undertake the
25 representation of a meritorious civil rights case” without “produc[ing] windfalls to
26 attorneys.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). The moving
27 party bears the burden on both hours and rates. *Hensley*, 561 U.S. at 437. Having
28 established that the Plaintiffs are entitled to fees, the Court calculates the lodestar

1 amount.

2 In the typical case, a court should usually defer to the winning lawyer's
3 professional judgment about the work and time required to win the case. *Moreno v. City*
4 *of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). The Court does so here. The case
5 required an enormous amount of attorney time to articulate claims for relief, defend
6 against numerous defense motions to dismiss or for judgment on the pleadings filed by
7 several state office-holding defendants. Plaintiffs appropriately amended their Complaint
8 several times as the state defendants maneuvered and shifted their defenses. To better
9 and more efficiently seek relief for all aggrieved parents, Plaintiffs created a statewide
10 class action with four subclasses, which was certified over defendants' objections.
11 Plaintiffs sought and won a preliminary injunction, and eventually a permanent injunction
12 against the unconstitutional state education policies.

13 Some of the attorney hours spent were the result of this Court's suggestions, such
14 as the requirement to add the Attorney General as a defendant (Doc. No. 72) and then the
15 new defendant's motions to dismiss. (Doc. Nos. 95 and 96). More work was triggered
16 by the Court's questioning about whether parents should be included as plaintiffs, and
17 Plaintiff's Amended Complaint in response. (Doc. No. 130).

18 Many of the hours spent by Plaintiffs' counsel were required to respond to
19 defendants' litigation intransigence. For example, the State Superintendent of Public
20 Instruction and the members of the State Board of Education moved to dismiss the case
21 against them at the outset of litigation. (Doc. No. 25). That is not unusual. What is
22 unusual is that shortly after the motions were denied (Doc. No. 42), the defendants
23 moved for judgment on the pleadings (Doc. No. 53), effectively trying to sidestep the
24 effect of the Court's Order denying their motions to dismiss. The same state defendants
25 filed motions to dismiss, once again, after the filing of Plaintiffs' amended complaint
26 (Doc. Nos 146 and 147), followed shortly thereafter, again, by motions for judgment on
27 the pleadings. (Doc. Nos 149 and 150). When the Plaintiffs moved to certify the class,
28 the California attorney general moved to dismiss. (Doc. No. 156). Only one week after

1 the Court denied the motions to dismiss on January 7, 2025, the same State
2 Superintendent of Public Instruction filed another motion to dismiss. (Doc. No. 195).

3 After the permanent injunction was entered, the state defendants filed a motion in
4 this Court to stay the injunction on December 22, 2025, and then filed an appeal on the
5 next day, December 23, 2025, without waiting for a ruling from this Court – a ruling that
6 was entered on December 24, 2025 – effectively wasting scarce judicial resources during
7 a statewide winter break from public education, the necessity of which remains
8 unexplained. Twice, the state defendants formally withdrew arguments after they were
9 shown to be inarguably meritless (*e.g.*, the argument of mootness until it was shown that
10 the state department of education was still incorporating constitutionally defective
11 statements in training materials, and the argument that Plaintiffs were not actually
12 prevailing parties until the U.S. Supreme Court vacated a stay and explained that
13 Plaintiffs would likely prevail on the merits).

14 In short, if Plaintiffs' counsel spent time on the case that would normally be
15 considered unnecessary, it was time most likely required to overcome the defendants'
16 litigation strategy of resisting at all junctures. Therefore, other than work on amicus
17 briefs described next, the Court finds all of Plaintiffs' attorney time to be reasonably
18 incurred.

19 As to Plaintiffs' work on amicus briefs in other cases, the hours expended were
20 reasonable, perhaps even strategic, but not recoverable in this case. The billing records
21 reflect that counsel and staff incurred 31.2 hours for drafting, revising, finalizing, filing,
22 and serving the amicus brief. Those entries include reviewing correspondence and court
23 rules, drafting and revising the amicus brief, incorporating edits, reviewing proofs,
24 preparing the table of authorities, coordinating with filing and printing vendors, and
25 serving the brief on counsel. The total fees associated with that amicus work are
26 \$24,768.00, with an additional \$2,739.22 in costs and expenses. Accordingly, to the
27 extent time spent on amicus work is not recoverable, 31.2 hours, \$24,768.00 in fees, and
28 \$2,739.22 in costs should be deducted from the total request.

Lodestar Multiplier

Plaintiffs request a 1.25 multiplier, which aligns with higher statewide rates, resulting in a lodestar of \$4,551,656.63. Plaintiffs base their request for a 1.25 lodestar multiplier due to the importance of the case, the outstanding results achieved, the undesirability of the case, and the likelihood that another attorney would not have accepted the case. *See e.g., Guam Soc’y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 697 (9th Cir. 1996) (2.0 multiplier); *accord Barnes v. City of Cincinnati*, 401 F.3d 729, 746 (6th Cir. 2005) (1.75 multiplier) (“the case was highly controversial”); *Jaramillo v. Cty. of Orange*, 200 Cal. App. 4th 811, 830 (2011) (1.15 multiplier) (awarding multiplier because counsel suffered “a degree of public opprobrium”). “An enhancement is proper...when these factors, though partially reflected in the lodestar, are not *fully* reflected in the lodestar.” *Sonoma Land Tr. v. Thompson*, 63 Cal. App. 5th 978, 988 (2021); *accord In re Manoa Fin. Co., Inc.*, 853 F.2d 687, 691 (9th Cir. 1988).

Plaintiffs deserve a multiplier in this case. The case concerns a very important subject. State public education policies impinged on families’ right to the free exercise of religion under the First Amendment. The policies also rejected and subverted the federal constitutional rights of California parents to guide the health and well-being of their school-age children. Such concerns intrude among the most important areas of family life in America’s history and tradition.

At the same time Plaintiffs achieved impressive results through three years of dogged litigation. To this day, the Defendants continue to fight about the merits based on the thinnest of arguments. Take the defendants’ just-filed *ex parte* motion to amend the permanent injunction, for example. The injunction (and whether it should continue to be stayed) was the subject of the Supreme Court’s recent decision. The Supreme Court’s review found no fault with the injunction and lifted the appeals court’s stay of the injunction. Today, only days later, the state defendants vociferously argue that the injunction is flawed and needs to be modified.

The Court agrees with Plaintiffs and applies a lodestar multiplier of 1.25 for a total

1 fee award of \$4,551,656 minus the \$24,768.00 for the 31.2 hours spent on amicus work
2 in attorneys' fees.

3
4 **III. CONCLUSION**

5 For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Attorney's
6 Fees and awards Plaintiffs fees in the amount of **\$4,526,888**. *C.f., Lucas R., et al. v.*
7 *Robert F. Kennedy, Jr.*, Case No. CV 18-5471-DMG (BFMx), Order (C.D.C.A. March 6,
8 2026) (awarding attorney fees and costs of \$7,025,420 for successful litigation protecting
9 constitutional rights of undocumented or refugee minors detained in the custody of the
10 federal Office of Refugee Resettlement).

11 **IT IS SO ORDERED.**

12 DATED: March 30, 2026

13 
14 **HON. ROGER T. BENITEZ**
United States District Judge