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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRISON LEGAL NEWS,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

No. C 07-02058 CW

ORDER GRANTING IN
PART PLAINTIFF'S
MOTION FOR
RECOVERY OF FEES
AND ESTABLISHMENT
OF A SEMI-ANNUAL
FEE PROCESS

Plaintiff Prison Legal News has filed a motion for recovery of reasonable attorneys' fees and establishment of a semi-annual fees process. Defendants oppose the motion. The motion was decided on the papers. Having considered all of the papers filed by the parties, the Court grants Plaintiff's motion in part and denies it in part.

BACKGROUND

Plaintiff Prison Legal News (PLN) is an organization that alleged that the California Department of Corrections and Rehabilitation (CDCR) illegally censored its publications. In January, 2006, the parties entered into an agreement to negotiate

1 in order to settle Plaintiff's claims and to avoid litigation. The
2 agreement to negotiate provided that Plaintiff "shall be the
3 prevailing party for purposes of reasonable attorneys' fees, costs
4 and expenses pursuant to 42 U.S.C. § 1988 and other relevant fee
5 shifting statutes." Rosen Decl., Ex. 8 at Appx. A ¶ 8.

6 In December, 2006, the parties entered into a settlement
7 agreement. The settlement agreement provides that "CDCR agrees to
8 pay to PLN's counsel reasonable attorneys' fees, costs and expenses
9 until the time that this Settlement Agreement is signed by the
10 parties. . . ." Id. at Ex. 8 ¶ 7. The settlement agreement also
11 provides that

12 PLN and its attorneys expressly reserve their rights to
13 pursue claims for attorneys' fees, costs and expenses
14 for work performed after the time the Settlement
15 Agreement is signed by all parties, including for work
16 spent on substantive issues related to this Agreement
17 and/or work spent securing their fees for fees and
18 collecting any and all fees and expenses that are due to
19 them. The CDCR expressly reserves its right to oppose
20 any such claim. The Parties agree that all issues
21 pertaining to any such attorneys' fees, costs and
22 expenses are unresolved and therefore are subject to
23 Paragraphs 9-10 of this Agreement

24 Id. at ¶ 7(b). Paragraph nine provides that the parties will
25 request that the Court "dismiss the complaint, but retain
26 jurisdiction to enforce the Settlement Agreement, including without
27 limitation, disputes over Defendant's compliance with the terms of
28 this Agreement and the amounts of the attorneys' fees, costs and
29 expenses to be paid to Plaintiff's attorneys." Id. at ¶ 9.

30 Paragraph ten provides that the parties will submit to jurisdiction
31 in this District for purposes of enforcing the settlement
32 agreement.

1 The settlement agreement also provides that within 150 days of
2 its execution, Plaintiff would file a complaint in this district
3 alleging the claims resolved by the settlement agreement and that
4 the claims would be immediately dismissed, with the Court retaining
5 jurisdiction to resolve any disputes over compliance or attorneys'
6 fees. Id. at ¶ 8. Plaintiff filed this complaint on April 12,
7 2007. On August 22, 2007, the parties filed a stipulation and
8 request for dismissal of the case without prejudice.¹

9 Between December 12, 2006 and September 5, 2007, the parties
10 attempted to resolve their disputes regarding fees and costs. The
11 parties were able to agree to the amount to which Plaintiff was
12 entitled for work done before December 12, 2006, when the
13 settlement agreement was executed. Now Plaintiff moves for fees
14 for work performed by its attorneys after December 12, 2006 and for
15 establishment of a semi-annual fees process.

16 DISCUSSION

17 I. Entitlement to Fees

18 Under 42 U.S.C. § 1988, "the court, in its discretion, may
19 allow the prevailing party, other than the United States, a
20 reasonable attorney's fee as part of the costs." "Prevailing
21 plaintiffs are normally entitled to fees unless special
22 circumstances render an award unjust." Muckleshoot Tribe v. Puget
23 Sound Power & Light Co., 875 F.2d 695, 696 (9th Cir. 1989).

24
25 ¹The parties originally asked the Court not to close this case
26 upon its dismissal. At a November 27, 2007 case management
27 conference, the parties agreed that this case should be closed upon
28 resolution of this motion for attorneys' fees subject to retention
of jurisdiction for enforcement. In a concurrently filed order,
the Court now closes the case.

1 Defendants argue that, although the settlement agreement states
2 that Plaintiff is the prevailing party for purposes of setting
3 reasonable attorneys' fees and costs until the date the settlement
4 agreement was signed by the parties, the plain language of the
5 agreement "does not declare that Plaintiff is the prevailing party
6 on work performed after that date." Opposition at 4. Therefore,
7 Defendants argue, Plaintiff is not entitled to fees under § 1988
8 for any work done after the date the settlement agreement was
9 signed. Plaintiffs counter that they may recover these fees
10 because they have not explicitly waived the right to collect fees
11 for activities performed to ensure and enforce compliance with the
12 settlement agreement.

13 In Muckleshoot Tribe, the Ninth Circuit held that "a waiver of
14 attorneys' fees may be established by clear language in the
15 release" or, in some circumstances, "where the language in the
16 release is unclear or ambiguous, [by] the intent of the parties
17 that the attorneys' fees be waived." Id. at 698. Absent such an
18 explicit or implicit waiver, a prevailing plaintiff will normally
19 be entitled to recover fees. Id. at 696.

20 Defendants argue that Plaintiff's reservation of its right to
21 seek fees for work performed after the agreement was signed and
22 Defendants' reservation of their right to oppose such a request
23 constitutes a fee waiver. However, Defendants do not cite any
24 authority for such a reading of a reservation of rights. As
25 Plaintiff points out, such a reservation of rights clearly
26 establishes that it does not waive its right to fees for work
27 performed after the settlement agreement was signed.

1 Defendants next argue that Plaintiff is not a prevailing party
2 "automatically" entitled to fees for work performed after the
3 settlement agreement was signed and, for purposes of work performed
4 after the agreement was signed, "Plaintiff is entitled to
5 prevailing party status only after succeeding on a motion to
6 enforce a material violation of the Settlement Agreement based upon
7 proving a constitutional violation." Opposition at 6. However,
8 Plaintiff does not argue that it is "automatically" entitled to
9 fees. Rather, Plaintiff has filed a motion arguing that it is the
10 prevailing party for purposes of the work performed after the
11 settlement agreement was signed and that the amount requested is
12 reasonable.

13 Defendants' only argument that Plaintiff is not the prevailing
14 party for purposes of work performed after the settlement agreement
15 was signed is that the agreement "required both parties to
16 undertake work after the date of settlement, specifically the
17 filing of a complaint and a dismissal." Opposition at 6.
18 Moreover, Defendants argue, "No significant amount of work was
19 necessary to accomplish this task." Id. Although Defendants can
20 and do argue that the amount of fees requested by Plaintiff is
21 unreasonable, the minimal nature of the work is not a sufficient
22 basis on which to deny fees altogether. Further, as Plaintiff
23 notes, much of the work it performed after signing the settlement
24 agreement was anticipated by the agreement and necessary to
25 effectuate its terms. Therefore, the Court finds that Plaintiff is
26 entitled to attorneys' fees for work performed after the settlement
27 agreement was signed and turns to the reasonableness of the fees

1 requested.

2 II. Reasonableness of Fees

3 In the Ninth Circuit, reasonable attorneys' fees are
4 determined by first calculating the "lodestar." Jordan v.
5 Multnomah County, 815 F.2d 1258, 1262 (9th Cir. 1987). "The
6 'lodestar' is calculated by multiplying the number of hours the
7 prevailing party reasonably expended on the litigation by a
8 reasonable hourly rate." Morales v. City of San Rafael, 96 F.3d
9 359, 363 (9th Cir. 1996). There is a strong presumption that the
10 lodestar figure represents a reasonable fee. Jordan, 815 F.2d at
11 1262. However, the court may adjust the award from the lodestar
12 figure upon consideration of additional factors that may bear upon
13 reasonableness. Kerr v. Screen Guild Extras, Inc., 526 F.2d 67, 70
14 (9th Cir. 1975). The twelve Kerr factors are (1) the time and
15 labor required, (2) the novelty and difficulty of the questions
16 involved, (3) the skill requisite to perform the legal service
17 properly, (4) the preclusion of other employment by the attorney
18 due to acceptance of the case, (5) the customary fee, (6) whether
19 the fee is fixed or contingent, (7) time limitations imposed by the
20 client or the circumstances, (8) the amount involved and the
21 results obtained, (9) the experience, reputation, and ability of
22 the attorneys, (10) the "undesirability" of the case, (11) the
23 nature and length of the professional relationship with the client,
24 and (12) awards in similar cases. Id.

25 The Supreme Court has recognized that, while it is appropriate
26 for the district court to exercise its discretion in determining an
27 award of attorneys' fees, it remains important for the court to

28

1 provide "a concise but clear explanation of its reasons for the fee
2 award." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983); Hall v.
3 Bolger, 768 F.2d 1148, 1151 (9th Cir. 1985) (in computing an award,
4 the district court should provide a "detailed account of how it
5 arrives at appropriate figures for 'the number of hours reasonably
6 expended' and 'a reasonable hourly rate'" (quoting Blum, 465 U.S.
7 at 898).

8 Plaintiff requests a total of \$138,781.29 in fees and costs
9 for work on the case between December 12, 2006, the date the
10 settlement agreement was signed, and August 31, 2007. This amount
11 represents \$95,306.50 in attorneys' fees and \$1,376.41 in expenses
12 for time spent on the underlying litigation and \$42,098.38 in
13 attorneys' fees and expenses incurred in relation to the instant
14 attorneys' fees claim. Defendants argue that the amount requested
15 is unreasonable on several grounds.²

16 A. Non-Litigation Activities

17 Defendants first argue that Plaintiff improperly included fees
18 for 10.65 hours spent on "activities unrelated to litigation" such
19 as drafting press releases and responding to media inquiries. The
20 Ninth Circuit has held, "Where the giving of press conferences and

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22 ²Defendants include a general argument that 99.60 hours of
23 work billed by Plaintiff's attorneys is not sufficiently detailed
24 because they utilized "block billing," that is, they billed as a
25 lump sum across two or more discrete tasks so that someone
26 reviewing the record cannot ascertain how much time was charged to
27 complete a specific task. However, Defendants state that "those
28 entries have not been questioned here solely on the basis of the
billing method." A review of the challenged entries reveals that
they are sufficiently specific to determine how much time was
charged to complete a specific task. Therefore, the Court will not
reduce compensation for the hours based on Defendants' claim that
the time entries are block-billed.

1 performance of other lobbying and public relations work is directly
2 and intimately related to the successful representation of a
3 client, private attorneys do such work and bill their clients.
4 Prevailing civil rights plaintiffs may do the same." Davis v. City
5 of San Francisco, 976 F.2d 1536, 1545 (9th Cir. 1992), reh'g denied
6 and opinion vacated in non-relevant part, 984 F.2d 345 (1993).

7 Plaintiff's counsel asserts that the press releases and
8 interviews with members of the press were necessary to the success
9 of this litigation. As Plaintiff argues, absent such press
10 coverage, the inmates who subscribe to its publication "would be
11 unlikely to learn of the terms of the Agreement, which include a
12 subscription to Prison Legal News for every CDCR institution's
13 libraries." Reply at 11. This knowledge was crucial to
14 Plaintiff's goal of improving prisoner access to its publication.
15 The Court will not reduce Plaintiff's attorneys' compensable hours
16 on this basis.

17 B. Administrative and Clerical Activities

18 Defendants next challenge \$11,628.12 in fees based on 52.32
19 hours of work performed by attorneys and paralegals that they
20 allege is administrative or secretarial. The Supreme Court has
21 held that "purely clerical or secretarial tasks should not be
22 billed at a paralegal rate, regardless of who preforms them."
23 Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989). Defendants'
24 expert John Trunko identifies tasks including "updating and
25 organizing files, calendaring, supervising support staff, filing
26 and reviewing their billing statements" that Defendants assert they
27 should not be required to pay. Without citation, Trunko concludes,
28

1 "Administrative and clerical activities are considered to be part
2 of a law firm's overhead and, as such, included within the law
3 firm's hourly rates for professional services. They are generally
4 not properly chargeable to a client or recoverable in litigation."
5 Trunko Decl. ¶ 11.

6 However, the Ninth Circuit has held that:

7 If the attorney's hourly rate already incorporates the
8 cost of work performed by non-attorneys, then courts
9 should not compensate for these costs as an additional
10 reasonable attorney's fee. The key . . . is the billing
11 custom in the relevant market. Thus, fees for work
12 performed by non-attorneys such as paralegals may be
13 billed separately, at market rates, if this is the
14 prevailing practice in a given community. Indeed, even
15 purely clerical or secretarial work is compensable if it
16 is customary to bill such work separately, though such
17 tasks should not be billed at the paralegal rate,
18 regardless of who performs them. . . . [T]he district
19 court may properly insist that the [moving party] show
20 that it is the custom in the relevant community to bill
21 separately for work performed by the non-attorneys at
22 issue

23 Trustees of Constr. Indus. and Laborers Health and Welfare Trust v.
24 Redland, 460 F.3d 1253, 1257 (9th Cir. 2006) (internal quotation
25 marks and citations omitted).

26 Lead counsel for Plaintiffs, a partner at the firm, declares
27 that the challenged tasks "are all tasks that would be billed by
28 me, my firm and San Francisco Bay Area attorneys to clients who are
billed and who pay bills on a current basis." Rosen Decl. ¶ 17.
However, Plaintiffs simply argue that "[m]any of the tasks"
challenged as clerical "are in fact crucial tasks that require
attorney or paralegal attention." Reply at 11. As examples,
Plaintiffs note that Defendants challenge fees for calendaring and
reviewing billing statements.

1 The challenged tasks were performed by one partner, three
 2 associates and two paralegals. See Trunko Decl., Ex. G. After
 3 reviewing the challenged billing items, the Court finds that the
 4 following items are clerical tasks that cannot be billed at a
 5 paralegal or attorney rate:

Date	Name	Task	Hours Billed	Hourly Rate	Amount Billed
12/12/06	K. Le	Create index for settlement agreement binder	.20	\$170	\$34
3/8/07	K. Le	File case emails	.20	\$170	\$34
3/8/07	K. Le	File correspondence and memos	.20	\$170	\$34
3/13/07	K. Le	File memos and correspondence	.20	\$170	\$34
3/19/07	M. Wilkinson	File relevant pages from AW email re: CA regulatory notice registry	.30	\$160	\$48
4/19/07	K. Walczak	Update case calendar w/new dates	.30	\$295	\$88.50
4/23/07	M. Wilkinson	Copy file and courtesy copies of proof of service, proof of service cover letter and prep for Fed Ex	.90	\$160	\$144
6/6/07	A. Whelan	Conf w/ support staff re processing same and emails to/from client re same	.15	\$340	\$51

1	6/7/07	M. Wilkinson	2 letters re: notice of lawsuit and waiver of service of summons, gather enclosures, make copies, scan, file, mail, and circulate	2.7	\$160	\$432
2						
3						
4						
5						
6						
7	6/25/07	M. Wilkinson	Print and gather docs for KMW re filing deadlines and ADR	.40	\$160	\$64
8						
9						
10	7/31/07	S. Rosen	Filing	.10	\$700	\$70
11	7/31/07	M. Wilkinson	Scan and circulate letter re RPMG hearing transcript	.10	\$160	\$16
12						
13						
14	8/22/07	K. Walczak	Supervise arranging for messenger for courtesy copies of stipulated dismissal, settlement agreement, proposed order to court	.20	\$295	\$59
15						
16						
17						
18						
19					TOTAL	\$1,108.50

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21 Therefore, the Court reduces Plaintiff's requested fees by
22 \$1,108.50.

23 C. Vague Billing Entries

24 Defendants next challenge \$14,241.25 in fees based on 20.88
25 hours of entries they argue are "non-descriptive." Opposition at
26 11. Almost all of the entries challenged on this basis are entries
27 by Sanford Rosen for email or conferencing that do not indicate the

1 subject of such communications or do not indicate the other party
2 or parties involved in the communications. However, as Plaintiffs
3 note, many of those entries "are readily understood when viewed in
4 the context of the surrounding entries." Reply at 12. For
5 example, it is clear that the January 4, 2007 entry for "email
6 to/from AW" was about a letter regarding settlement payment when
7 read in the context of a billing entry by Amy Whelan for "ltr from
8 M. Jorgenson re settlement payment; email to SJR re same" made on
9 the same date. Rosen Decl., Ex. 9 at 2. Moreover, it is not
10 unreasonable to expect that the partner supervising the case would
11 have multiple entries for conferencing and emailing with the
12 associates working with him. The Court will not reduce the
13 Plaintiff's attorneys' compensable hours on this basis.

14 D. Multiple Attendance and Excessive Internal Conferencing

15 Defendants next challenge \$414 of fees based on 1.35 hours of
16 conferences and meetings where multiple attorneys were in
17 attendance and \$8,125.22 of fees based on 27.06 hours of intra-
18 office conferencing. Defendants do not provide any legal basis for
19 denying these fees in their opposition and simply cite their expert
20 Trunko's declaration in support of their request.

21 Defendants' request for a reduction for multiple attendance is
22 based on two telephone conferences, one which was attended by a
23 partner and two associates of Plaintiffs' attorneys' firm and
24 another which was attended by two associates.³ Defendants do not

25
26 ³Defendants mistakenly argue that four attorneys billed for
27 one of these calls; however only three attorneys are included in
28 Trunko's "multiple attendance" analysis. Trunko Decl., Ex. I. It
appears that Trunko mistakenly included an entry for a conversation

1 provide any basis for a finding that having more than one
2 Plaintiff's attorney present at these conferences with counsel for
3 Defendants was unreasonable. Accordingly, the Court will not
4 reduce Plaintiff's attorneys' compensable hours on this basis.

5 Defendants cite only Trunko's declaration in support of their
6 argument that Plaintiff's requested fees should be reduced for
7 excessive internal conferencing. Without citation, Trunko argues,
8 "Frequent conferencing among attorneys has often been criticized by
9 the courts and may indicate excessive staffing or billing for
10 communications of an administrative nature." Trunko Decl. ¶ 14.
11 Trunko next states that over twenty-one percent of Plaintiff's
12 requested fees are based on billing for intra-office conferencing,
13 a figure Trunko describes as "significant." Id. He therefore
14 concludes that the "amount of such conferencing was undoubtedly
15 increased as a result of the involvement of multiple attorneys in
16 the case" before he recommends resolving the issue by arbitrarily
17 challenging "the fees billed by the multiple biller(s) for the
18 conference other than the participant in the conference with the
19 highest total fees for the conference." Id. Neither Trunko nor
20 Defendants provide any explanation for this methodology. Moreover,
21 as another court stated in rejecting a challenge to fees based on
22 the identical methodology, "A conference with only one participant
23 is no longer a conference. The upshot of accepting [the
24 defendant's] view would be to hold that all conferencing by

25 _____
26 between Amy Whelan and "M. Jorgenson" as an example of a conference
27 with multiple attendance even though Whelan was the only
28 Plaintiff's attorney who participated or billed. See Id. at 2.

1 Plaintiff's attorneys was excessive and duplicative." Chin v.
2 Daimler Chrysler Corp., 520 F. Supp. 2d 589, 605 (D.N.J. 2007).
3 However, Defendants have provided no evidence or argument that any
4 conference was excessive or duplicative. Therefore, the Court will
5 not reduce Plaintiff's attorneys' compensable hours on this basis.

6 E. Research Presumed Familiar

7 Defendants next argue that they should not be required to pay
8 for attorney time spent researching issues that Trunko opines
9 "would be presumed to be familiar to experienced counsel." Trunko
10 Decl. ¶ 15. Neither Trunko nor Defendants provide any basis for
11 this determination. It appears that almost all of the challenged
12 entries are based on time spent researching local procedural rules.
13 See Trunko Decl., Ex. K. As Plaintiffs note, such rules are
14 subject to change and failure to comply with them can result in
15 prejudice to an attorney's clients. The Court will not reduce
16 Plaintiff's attorneys' compensable hours on this basis.

17 F. Other Duplicative and Potentially Excessive Time

18 Defendants next argue, "Of the hours claimed by Plaintiff's
19 counsel for work performed since December 12, 2006[,] 315.27 hours
20 and \$103,172.67 were spent on duplicative and excessive
21 timekeeping." Opposition at 12. As with their other arguments,
22 Defendants cite only Trunko's declaration in support of this
23 argument. Defendants cite as an example of excessive billing that
24 Plaintiff's counsel has billed for 35.43 hours of researching,
25 drafting, reviewing and editing the complaint prior to settlement
26 and that counsel spent additional time on the complaint after the
27 settlement agreement was executed. However, Plaintiff notes that

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1 "the Complaint itself was a negotiated document, requiring back and
2 forth interaction with Defendants and their attorneys." Rosen
3 Reply Decl. ¶ 21. Indeed the challenged time spent on the
4 complaint includes entries for communications with Defendants and
5 later revisions. See Trunko Decl., Ex. L-1. Defendants also note
6 that thirty percent of Plaintiff's fee request is based on fees for
7 this fee request. However, Defendants do not indicate why they
8 believe that the 125.60 hours spent on this fee request is
9 unreasonable.

10 Defendants next argue that a twenty-five percent reduction in
11 fees is appropriate based on Trunko's conclusion that Plaintiff's
12 attorneys have submitted fees for excessive and redundant tasks.
13 The only factual basis for this argument is Trunko's statement that
14 "[i]n some cases, the time billed for various projects appears
15 potentially excessive." Trunko Decl. ¶ 16. Moreover, Plaintiff's
16 attorneys have already reviewed their billing records and made
17 discrete billing reductions of \$14,177.50. The Court will not
18 reduce Plaintiff's attorneys' compensable hours further than
19 counsel already has.

20 G. Expenses

21 Defendants next challenge \$951.70 of Plaintiff's request for
22 \$1,492.79 in expenses related to litigation. Again, the only basis
23 for this challenge is citation to Trunko's conclusion that the
24 expenses claimed are questionable because he believes they are not
25 adequately documented or they are general firm overhead that would
26 not normally be charged to a client. See Trunko Decl. ¶ 17. In
27 particular, Defendants argue that Plaintiff's charge for \$464.69

1 for online and Westlaw research should be accompanied by further
2 documentation. Moreover, he argues, such charges are normally
3 accrued by a law firm in the course of running a business.
4 However, Plaintiff submits a declaration indicating that both the
5 level of detail of the billing and the request for compensation for
6 such research are consistent with the firm's practice for its
7 paying clients and in its fee applications. See Rosen Reply Decl.
8 ¶ 26. The Court finds that these expenses are adequately
9 documented and reasonable.

10 Defendants next challenge Plaintiff's claim for \$0.20 per page
11 for photocopying. However, Plaintiff provides evidence that
12 counsel routinely charges \$0.25 per page to its paying clients and
13 that these Defendants routinely pay them \$0.20 per page in other
14 cases. The Court will not reduce the amount charged for
15 photocopying.

16 Finally, Defendants argue that Plaintiff's travel expenses
17 should be reduced because counsel failed to provide receipts or
18 documentation relating to travel on May 11, 2007. The challenged
19 items are for \$8.00 in tolls and \$15.79 and \$7.50 in gas for travel
20 to a public hearing on May 11, 2007. Trunko Decl., Ex. N.
21 Plaintiff provides evidence that this is the level of detail
22 included in counsel's bills to paying clients and in other fee
23 requests. The Court finds that this level of detail is sufficient
24 to support Plaintiff's request. The Court will not reduce the
25 compensation sought for expenses.

26 H. Hourly Rate

27 Determining a reasonable hourly rate is a critical inquiry.

28

1 Jordan, 815 F.2d at 1262 (citing Blum v. Stenson, 465 U.S. 886, 895
2 n.11 (1984)). In establishing the reasonable hourly rate, the
3 court may take into account: (1) the novelty and complexity of the
4 issues; (2) the special skill and experience of counsel; (3) the
5 quality of representation; and (4) the results obtained. See
6 Cabrales v. County of Los Angeles, 864 F.2d 1454, 1464 (9th Cir.
7 1988). These factors are subsumed in the initial lodestar
8 calculation, and should not serve as independent bases for
9 adjusting fee awards. Morales, 96 F.3d at 363-64. The reasonable
10 rate inquiry should also be informed by reference to the prevailing
11 market rates in the forum district. Gates v. Deukmejian, 987 F.2d
12 1392, 1405 (9th Cir. 1992).

13 Plaintiff seeks an hourly rate of \$700 for Sanford Jay Rosen,
14 a 1962 law school graduate and the lead attorney on its case, \$340
15 for Amy Whelan, a 2001 law school graduate, \$325 for Meghan Lang, a
16 2002 law school graduate, \$295 for Kenneth Walczak, a 2003 law
17 school graduate, and between \$160 and \$170 for paralegals and law
18 student interns. Defendants argue generally that these rates are
19 exorbitant and go on to note that the hourly rates requested exceed
20 the average rates charged by law firms in California, \$353 for
21 partners and \$252 for associates. Defendants further note that the
22 rates claimed by Plaintiff's counsel far exceed the rates allowed
23 by the Prison Litigation Reform Act (PRLA). However, Defendants do
24 not, and indeed cannot, argue that this case is governed by the
25 PRLA.

26 The only specific argument that Defendants make is that
27 Plaintiff has not provided sufficient evidence to establish that
28

1 Mr. Rosen's claimed hourly rate of \$700 is the prevailing market
2 rate. Defendants argue that Plaintiff only provides evidence that
3 one other Bay Area law firm bills its managing partner at \$700 per
4 hour but name two firms that do so--Altshuler Berzon LLP and Cooley
5 Godward. Opposition at 14-15. In fact, Plaintiff's expert cites
6 at least eight law firms that billed over \$700 an hour in recent
7 years. See, e.g., Pearl Decl. at 8, 10, 11, 13-15.

8 Defendants also argue that Plaintiff's attorneys' claimed
9 rates should be reduced because the case "did not involve complex
10 legal issues" and involves "issues which Plaintiff has been
11 litigating all over the United States for the past several years."⁴
12 Opposition at 14. However, Plaintiff provides evidence that a high
13 level of skill and significant work were required to reach a
14 settlement in this case. The Court will not reduce the hourly
15 rates claimed by Plaintiff's attorneys.

16 I. Interest

17 Plaintiff argues that it is entitled to interest on these fees
18 and costs dating back at least to September 12, 2007, the date by
19 which Defendants received notice of the amount of fees and costs
20 claimed by Plaintiff, if not to the date of the Settlement
21 Agreement, the date Plaintiff argues that it "secured its
22 entitlement to a general award of civil rights attorney's fees."
23 Motion at 11. Indeed, the Ninth Circuit has held, "Interest [on

24

25 ⁴Defendants also argue that the fact that this case was
26 resolved without prolonged litigation warrants a reduction in the
27 hourly rate. While the extent of litigation activities goes to the
28 number of hours spent on the case, it does not go to the complexity
of the issues themselves.

1 attorneys' fees] runs from the date that entitlement to fees is
2 secured, rather than from the date that the exact quantity of fees
3 is set." Friend v. Kolodziejczak, 72 F.3d 1386, 1391-92 (9th Cir.
4 1995), cert. denied, 516 U.S. 1146 (1996). Defendants do not
5 respond to this argument. Nonetheless, the settlement agreement
6 did not state that Plaintiff would be entitled to attorneys' fees
7 for work performed after the agreement was signed; it only
8 recognized that Plaintiff might file a motion for fees for such
9 work. The Court finds that Plaintiff is only entitled to interest
10 accruing subsequent to the date of this order.

11 II. Establishment of Semi-Annual Fees Process

12 Plaintiff next argues that the Court should establish a semi-
13 annual process to protect its right to future fee awards.

14 Plaintiff argues that such a process is necessary because "[m]any
15 of the benchmarks set by the Settlement Agreement have not yet been
16 met." Motion at 11. Further, Plaintiff argues that "the
17 Settlement Agreement specifically contemplates that PLN will take a
18 prominent role in ensuring full compliance with the terms of the
19 Agreement." Id.

20 However, as Defendants note, the Settlement Agreement does not
21 specifically establish a right to ongoing monitoring of the
22 implementation of the agreement's terms. It only provides that
23 Defendants will provide Plaintiff with specific documents and that
24 Plaintiff may file motions to enforce the agreement if it can prove
25 a constitutional violation. Moreover, Plaintiff "anticipates that
26 compliance work in this matter will be far less extensive than" in
27 other cases with regular fees procedures. Motion at 12. The Court
28

1 is not convinced that a regular fees process is necessary or
2 appropriate at this time. Of course, this does not preclude
3 Plaintiff from filing further motions for attorneys' fees.

4 CONCLUSION

5 For the foregoing reasons, Plaintiff's motion for attorneys'
6 fees is GRANTED in part and DENIED in part (Docket No. 23). The
7 Court awards Plaintiff \$137,672.79 in fees and expenses, to be paid
8 forthwith by Defendants.

9 IT IS SO ORDERED.

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11 Dated: 4/10/08



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CLAUDIA WILKEN
United States District Judge