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Does 1 through 20, inclusive

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

FREEDOM FROM RELIGION FOUNDATION, INC., et al., Plaintiffs, vs. CHINO VALLEY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, etc. et al, Defendants.	Case No.: 5:14-CV-2336 JGB (DTBx) NOTICE AND PLAINTIFFS' MOTION FOR ATTORNEY'S FEES; MEMORANDUM OF POINTS AND AUTHORITIES Hearing Date: April 4, 2016 Hearing Time: 9:00 a.m. Courtroom: 1 Riverside Hon. Jesus G. Bernal

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 4, 2016, at 9:00 a.m., or on such other date and at such other time as the matter may be heard before the Honorable Jesus G.

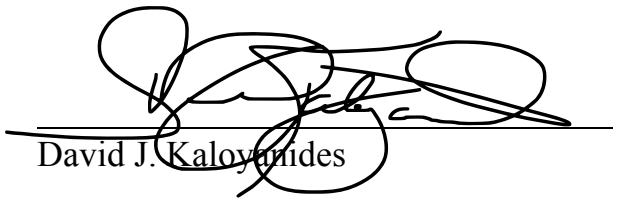
Bernal, United States District Court Judge, in Courtroom 1 of the United States District Court, located at 3470 Twelfth Street, Riverside, California, Plaintiffs will and hereby do move for an order establishing and awarding the amount of attorney's fees and costs under 42 U.S.C. §1988 (the Civil Rights Act) in the amount of $197,405.00.

The parties met and conferred pursuant to Local Rule 7-3 on February 25, 2016.

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the accompanying declarations, all pleadings, papers, and records on file in this action, such matters of which the Court may take judicial notice, and on such other matters as may be presented prior to or at the hearing. A breakdown of the services performed by each attorney is submitted with this motion. The subject matter of the work performed is described more fully in the accompanying memorandum. Plaintiffs also seek to tax costs in the amount of $546.70 pursuant to Local Rule 54-2, and a Bill of Costs and supporting documentation will be filed separately from this motion.

Respectfully submitted,

Dated: March 3, 2016



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In light of the Court's determination that plaintiffs prevailed on their Complaint, and pursuant to 42 U.S.C. § 1988 allowing for the recovery of attorney's fees and costs in § 1983 claims, the Court should grant this Motion and award plaintiffs the sum of $197,405.00 in attorney's fees and $546.70 in costs. Plaintiffs will file a separate application to tax costs pursuant to L.R. 54-2.

The attorney's fees and costs in this case are reasonable in light of the nature of this case, the novelty of the issues presented, the experience of counsel and the excellent results achieved for plaintiffs and the public. Accordingly, this Motion should be granted.

II. FACTUAL BACKGROUND

On November 13, 2014, plaintiffs filed a Complaint for Equitable Relief and Damages against Defendants Chino Valley Unified School District Board of Education and Board Members James Na, Sylvia Orozco, Charles Dickie, Andrew Cruz, and Irene Hernandez-Blair in their official representative capacities. As the Court is aware, the Complaint sought injunctive and declaratory relief under 28 U.S.C. §1983, among other related state law claims, and nominal damages along with recovery of attorney's fees under 42 U.S.C. §1988(b) for Defendants' conduct of opening the Board meetings with prayer, the reading and reciting of passages from the Christian Bible by Board members during Board meetings, and the proselytizing by Board members through religious comments and commentary during Board meetings.

On December 15, 2014, plaintiffs filed a First Amended Complaint to add eighteen additional plaintiffs who sued pseudonymously.[1]

From the outset, plaintiffs were required to litigate issues that should have been simple stipulations. Specifically, because defendants refused to stipulate to a reasonable protective order permitting certain plaintiffs (primarily minors) to proceed pseudonymously, plaintiffs had to file a motion for a protective order. This included securing evidence in support of the motion for a protective from experts and other non-party witnesses. Only after a change in counsel by defendants were the parties able to reach a reasonable stipulation for the protective order.

Furthermore, several incidents of apparent retaliation, particularly involving the minor plaintiffs, required investigation in this case. Although these incidents did not result in any specific legal action, because of the safety concerns to the plaintiffs, it was necessary to respond to these incidents, expending time and resources as part of the litigation.

Additional time that was required in this case was the result of defense counsel's failure to meet deadlines and appear at court ordered hearings. Although not significant in the overall litigation, this type of conduct by defense counsel added to the fees involved in this case.

Additional time was spent preparing for and participating in the Court ordered ADR program. This required submission of settlement statements as required by the Magistrate Judge before whom the settlement took place.

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[1] Plaintiffs' initial complaint named four individual plaintiffs pseudonymously. The First Amended Complaint named two individuals by their true names (Mike Anderson and Larry Maldonado) and added sixteen additional individual plaintiffs pseudonymously.

The bulk of the time in this case revolved around researching the core issue for all of plaintiffs' claims—whether the Supreme Court's ruling in *Town of Greece v. Galloway*, --- U.S. ---, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014) could be interpreted to extend the ruling of *Marsh v. Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983) to apply to local schools and School Boards. While the facts in this case were not readily subject to dispute, plaintiffs' motion for summary judgment (filed September 28, 2015, Dkt. No. 48) required substantial work to marshal the evidence from the defendants' School Board Meetings, secure numerous declarations from among the twenty-three plaintiffs, and research and analyze the history of Establishment Clause litigation in the school context. Moreover, defendant's cross motion for summary judgment (filed October 2, 2015, Dkt. No. 57) required additional work for plaintiffs' counsel to address issues that defendants did not raise by way of their opposition to plaintiffs' motion.[2]

There was no protracted discovery, nor any discovery disputes that added any unnecessary time and expense to this case. As the time records demonstrate, plaintiffs' counsel were all very careful to work as efficiently and cost-effectively as the issues in this case would permit.

On February 18, 2016, the Court granted plaintiffs' motion for summary judgment in part and denied defendants' motion for summary judgment in full. (See Order on Motion for Summary Judgment, February 18, 2016, Dkt. No. 87). Although some of plaintiffs' claims were dismissed, the Court held that plaintiffs were the

[2] Furthermore, defendants' counsel's failure to meet deadlines relating to the filing of the motion for summary judgment added unnecessary time and expense for plaintiffs in responding to the late filings.

prevailing party and entitled to recover attorney's fees. As plaintiffs prevailed on the core issue underlying each claim asserted, there should be no reduction in the attorney's fee award. Accordingly, this motion should be granted.

III. DISCUSSION

A. ATTORNEY'S FEES MAY BE AWARDED TO THE PREVAILING PARTY IN ACTIONS BROUGHT UNDER 28 U.S.C. §1983 CIVIL RIGHTS CLAIMS AS SET FORTH IN 28 U.S.C. §1988.

Pursuant to 42 U.S.C. §1988 the Court may award reasonable attorney's fees to the prevailing party in an action brought under 42 U.S.C. §1983.

The purpose of § 1988 is to ensure "effective access to the judicial process" for persons with civil rights grievances. . . . Accordingly, a prevailing plaintiff "'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (citations omitted).

Plaintiffs are "prevailing parties" under § 1988 if they succeed on any significant issue in their litigation that achieves some of the benefit sought in bringing suit. *Id.* at 433. Here, in granting the core issue of Plaintiffs' Motion for Summary Judgment, the Court determined that Plaintiffs are the prevailing party and entitled to an award of "costs, including reasonable attorney's fees." (*See* Judgment, February 18, 2016, Dkt. No. 88).

In determining a "reasonable" fee under §1988, the Court must first determine the "lodestar" amount. *Sorenson v. Mink*, 239 F.3d 1140, 1149 n. 4 (9th Cir. 2001). The Court applies a two-step approach for this determination.

> To determine the amount of a reasonable fee under § 1988, district courts typically proceed in two steps. First, courts generally "apply ... the 'lodestar' method to determine what constitutes a reasonable attorney's fee." *Costa*, 690 F.3d at 1135; *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir.1996); *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir.2006). Second, "[t]he district court may then adjust [the lodestar] upward or downward based on a variety of factors." *Moreno*, 534 F.3d at 1111. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013).

Step one involves a determination of the time spent multiplied by the appropriate rate. "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *See Morales*, *supra,* at 363.

The appropriate hourly rate is determined by several factors. First, the Court must consider the "prevailing market rates in the relevant community". *See Dang v. Cross*, 422 F.3d 800, 813 (9th Cir.2005) (quoting *Blum v. Stenson*, 465 U.S. 886, 895, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)); *see also Sorenson*, *supra*, 239 F.3d at 1149 (noting that the district court "must use" the market rate "to determine a fee under § 1988"). And that market rate should be specific to the type of representation and qualifications of counsel in the case. *See Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir.1985) (citing *Blum*, *supra*, 465 U.S. at 895 n. 11 ("in determining a reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.")). It is, therefore, immaterial whether the prevailing party is represented by private or nonprofit

counsel. *See Blum*, *supra*, at 895; *Sorenson*, *supra*, 239 F.3d at 1145-46.[3] "Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits." *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454-55 (9th Cir. 2010) (quoting *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)); *see also, Carson v. Billings Police Dept.*, 470 F.3d 889, 892 (9th Cir. 2006); *Jadwin v. County of Kern*, 767 F.Supp.2d 1069, 1124 (E.D. Cal. 2011).

In establishing the reasonable hourly rate, the Court may take into account several factors in addition to the rate prevailing in the community for similar work: (1) the novelty and complexity of the issues; (2) the special skill and experience of counsel; (3) the quality of representation; and (4) the results obtained. *See Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1464 (9th Cir.1988), *cert. granted sub nom County of Los Angeles v. Cabrales*, 490 U.S. 1087, 109 S.Ct. 2425, 104 L.Ed.2d 982 (1989) (remand for reconsideration), and *decision reinstated on remand*, 886 F.2d 235 (9th Cir. 1989). Other factors that can be considered are, *inter alia*, (1) the time and labor required; (2) time limitations imposed by the client or circumstances; (3) the amount involved and the results obtained; (4) the "undesirability" of the case; and (5) awards in similar cases. *Hensley*, 461 U.S. at 430 n.3. Judges may also rely on their own familiarity with the legal market, their knowledge of customary rates, and their experience concerning reasonable and appropriate fees. *Ingram v. Oroudjian*, 647 F3d 925, 928 (9th Cir. 2011).

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[3] *See also Wirtz v. City of S. Bend, Ind.*, 2012 U.S. Dist. LEXIS 22236, 2012 WL 589454, *1 (N.D. Ind. Feb. 17, 2012) ("The ACLU of Indiana, ACLU National, and Americans United for Separation of Church and State attorneys didn't bill the four plaintiffs for the work they did on this case. That no attorney's fees were charged to a client doesn't preclude the award of attorney's fees to the organizations that did the legal work once the plaintiffs prevailed.").

Attorney fees may include time spent in proceedings before preparation of the complaint when "'the pre-preparation time was both useful and of a type ordinarily necessary to advance the . . . litigation to the stage it reached.'" *Bogan v. City of Boston*, 489 F.3d 417, 427 (1st Cir. 2007) (quoting *Webb v. Bd. of Educ.*, 471 U.S. 234, 243, 105 S. Ct. 1923, 85 L. Ed. 2d 233 (1985)). Necessary travel time is also compensable, though the court may reduce the hourly rate to account for unproductive time. *Anchondo v. Anderson, Crenshaw & Assocs., L.L.C.*, 616 F3d 1098, 1106 (10th Cir. 2010). Finally, the Ninth Circuit "has repeatedly held that time spent by counsel in establishing the right to a fee award is compensable." *Davis v. City and County of San Francisco*, 976 F.2d 1536, 1544 (9th Cir. 1992).

B. ALTHOUGH PLAINTIFFS DID NOT PREVAIL ON ALL THEIR CLAIMS, THEY ARE STILL ENTITLED TO FULL COMPENSATION WITHOUT ANY REDUCTION IN THE FEE AWARD.

The Court's order dismissed several claims and two parties. Yet neither the dismissed claims nor the dismissed parties should affect the Court's determination of the fee award because the underlying facts of the claims on which plaintiffs prevailed were the common facts for all parties and all claims.

Attorney's fees are generally only recoverable on the claims for which a party was unsuccessful *if those claims are unrelated* to the successful ones. *See Hensley v. Eckerhart*, *supra*, 461 U.S. at 435 ("Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters."); *Grendel's Den, Inc. v. Larkin*, 582 F. Supp. 1220, 1227 (D. Mass. 1984) *modified*, 749 F.2d 945 (1st Cir. 1984) ("Defendants assert that because Grendel's victory came as a

result of its establishment clause claim, counsel should not be compensated for any time spent developing their equal protection theory. . . . Defendants' argument misses the point. Grendel's was in fact successful with respect to the fundamental issue in the case—whether section 16C impermissibly afforded the Church an absolute veto power over the issuance of liquor licenses."). Although there is no bright-line rule for deciding when claims are related or unrelated for purposes of attorney's fee awards, the key factor is whether the claims "involve a common core of facts" or are based "on related legal theories." *See Hensley*, *supra*, 461 U.S. at 435. The Ninth Circuit has articulated this analysis as "whether relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised." *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141 (9th Cir. 1986) (quoting *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1279 (7th Cir. 1983)).

> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. See *Davis v. County of Los Angeles,* 8 E.P.D. ¶ 9444, at 5049 (CD Cal.1974). Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters. *Hensley*, *supra*, 461 U.S. at 435.

In this case, plaintiffs asserted several theories of recovery (both state and federal law claims) against the Chino Valley Unified School District Board of Education as an entity and against the Board Members in their individual representative capacities. Although plaintiffs prevailed only against four of the five Board Members so named (because Board Member Dickie had resigned his position on the board just about the time the lawsuit was filed), the conduct at the core of all plaintiffs' claims was the Resolution permitting religious prayer in School Board meetings along with the policy and custom of reciting prayers, Bible readings, and proselytizing at those School Board meetings. The defendant Board Members enacted the Resolution, the defendant Board Members promoted and supported the Resolution, and the defendant Board Members permitted and even participated in the unconstitutional conduct themselves. It was this conduct that was the basis of each of Plaintiffs' claims. Accordingly, it made no difference in this litigation that the School Board as an entity was named along with the individual Board Members because it was the conduct of the Board Members that was at issue.

Furthermore, the fact that the Court dismissed the state law claims does not support a reduction in the fee award. The state law claims were based on the same core facts as the successful federal claims. The state law claims did not seek relief "intended to remedy a course of conduct entirely distinct and separate from the course of conduct" giving rise to the federal claims on which plaintiffs prevailed. *See Thorne, supra,* at 1141.

C. THE LODESTAR AMOUNT OF $197,405.00 FOR ATTORNEY'S FEES IN THIS CASE IS REASONABLE AND SUPPORTED BY COMPETENT EVIDENCE.

The documentation submitted in support of this motion are sufficient to satisfy the Court that the hours expended were actual, non-duplicative and reasonable. The Ninth Circuit requires only that the affidavits be sufficient to enable the court to consider all the factors necessary to determine a reasonable attorney's fee award. *See Williams v. Alioto*, 625 F.2d 845, 849 (9th Cir. 1980); *Dennis v. Chang*, 611 F.2d 1302, 1308-9 (9th Cir. 1980). Here, Plaintiffs have submitted detailed time records as well as evidence of their experience and expertise.[4]

1. *David J. Kaloyanides*

The reasonable hourly rate for David J. Kaloyanides is $650.00 per hour. Mr. Kaloyanides was the lead trial counsel on this case and handled the bulk of the work in this litigation, spending 195.6 hours on this case. Mr. Kaloyanides has been a member of the State Bar of California since 1992. He is a Certified Specialist in Criminal Law, having been certified by the California Board of Legal Specialization in 2008. (Kaloyanides Decl., at ¶ 2). Mr. Kaloyanides is a highly experienced lawyer in complex federal litigation, primarily in the field of criminal law, but he is also experienced in litigating First Amendment Establishment Clause cases. (Kaloyanides Decl., at ¶¶2, 7, and 10-12).

Mr. Kaloyanides, FFRF's local counsel, brought a wealth of complex federal litigation experience along with extensive knowledge of federal practice in this Court. FFRF's counsel retained Mr. Kaloyanides because of his extensive litigation and trial

[4] See Kaloyanides Declaration in Support of Motion for Attorney's Fees, and Exhibit A thereto, Markert Declaration in Support of Motion for Attorney's Fees, and Exhibit A thereto, Seidel Declaration in Support of Motion for Attorney's Fees, and Exhibit A thereto, and Torres Declaration in Support of Motion for Attorney's Fees, and Exhibit A thereto, all of which are filed concurrently herewith.

experience. (Markert Decl., at ¶17). Mr. Kaloyanides practices primarily in this District. He has handled over 250 federal cases in this District and has tried over 36 cases to verdict. (Kaloyanides Decl., at ¶4). He has represented clients in some of the most complex federal criminal cases in this District, cases involving Violent Crime In Aid of Racketeering, complex financial crimes, as well as capital offenses. (Kaloyanides Decl., at ¶¶10-11).

Mr. Kaloyanides has been a member of the Criminal Justice Act Indigent Defense Panel for 12 years, and he was the Criminal Justice Act National Trial Panel Representative to the Administrative Office of the U.S. Courts for the Central District of California from 2011 to 2014. (Kaloyanides Decl., at ¶7). Most recently, Mr. Kaloyanides was appointed to the International Criminal Court's List of Counsel for the International Criminal Court in The Hague, Netherlands. (Kaloyanides Decl., at ¶6). He has lectured on issue relating to practice in the federal court, primarily on topics relevant to criminal law. (Kaloyanides Decl., at ¶13).

Mr. Kaloyanides has represented other First Amendment non-profit organizations in litigating Establishment Clause cases. In this District, he represented the American Humanist Association and the local resident plaintiffs in *American Humanist Association et al. v. The City of Lake Elsinore, etc., et al.*, 5:13-CV-00989 SVW (OPx). Mr. Kaloyanides successfully tried the case and secured declaratory and injunctive relief judgment for the plaintiffs whereby the City of Lake Elsinore was permanently enjoined from constructing and installing a religiously themed veteran's memorial. (Kaloyanides Decl., ¶12).

Although Mr. Kaloyanides was retained as FFRF's local counsel, as his billing records show, he was far more involved in the case than is typical for local counsel.

(Kaloyanides Decl., at ¶9 and Exhibit A). Mr. Kaloyanides was involved in the drafting stage of the Complaint, provided counsel and advice on strategy and procedure for litigating in this District. Moreover, he drafted most of the substantive motions raised in this case, as well as the response and opposition to those raised by defendants. He was directly involved in reviewing, revising and editing all filings with the Court. Mr. Kaloyanides also was key in analyzing the evidence and developing the litigation strategy. He was directly involved with both named plaintiffs as well as all of the DOE plaintiffs, meeting with and maintaining communications with each, as well as securing information and evidence from the plaintiffs throughout the case. (*See id*.)

Furthermore, Mr. Kaloyanides is a sole practitioner with a busy federal criminal defense practice. Mr. Kaloyanides had to decline other work or postpone other matters in order to devote his attention to this case. (Kaloyanides Decl., at ¶15). Mr. Kaloyanides is also a member of the community directly at issue in this litigation. He is a resident of, and his office is located in the District as well as specifically within the communities affected by this case. His children attend school within the defendants' school district—the Chino Valley Unified School District. (Kaloyanides Decl., at ¶14). Mr. Kaloyanides has received media attention (being on local television as well as in print media) because of his criminal practice as well as because of this case. (*See id*.) Moreover, he and his children have been the recipients of hostile community reaction—including harassment at school—during the course of this litigation. (Kaloyanides Decl., at ¶20).

a) Prevailing Rate in the Community

In determining the reasonable rate for an attorney of Mr. Kaloyanides's experience and expertise, the Court should be guided by the prevailing rate in the

community for an attorney of similar experience and skill. *See Blum, supra*, 465 U.S. at 895 n.11; *see also Chalmers, supra*, 796 F.2d at 1210-11 ("in determining a reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation."). The rate of $650.00 per hour is clearly reasonable based on the nature and complexity of this case, Mr. Kaloyanides's skill, experience, and expertise, and in light of the rates found reasonable in similar cases for counsel of similar experience and skill.

Comparable awards have been given to attorneys with Mr. Kaloyanides's experience and expertise in this jurisdiction. *See Kearney v. Hyundai Motor Am*., 2013 U.S. Dist. LEXIS 91636 (C.D. Cal. June 28, 2013) ($650 was reasonable rate for an attorney with more than twenty years of experience); *United States v. $17,700.00 in U.S. Currency, No. 08-4518*, 2008 U.S. Dist. LEXIS 123869 (C.D. Cal. Dec. 19, 2008) (order granting motion for attorney fees, finding that a rate of $550 in 2008 is reasonable for an experienced civil forfeiture attorney in Los Angeles); *Anderson v. Nextel Retail Stores*, LLC, 2010 U.S. Dist. LEXIS 71598, 12-13 (C.D. Cal. June 30, 2010) (Wilson, J.) ($600 for attorney with thirty-five years of experience was reasonable in this jurisdiction in 2010).

The rate of $650 per hour for Mr. Kaloyanides is also similar to the rates in other jurisdictions in California. In fact, it is slightly lower than other comparable jurisdictions. *See e.g., Prison Legal News, supra*, 608 F.3d at 455 (hourly rate of $700.00 per hour reasonable for attorney with 23 years experience in the Northern District of California); *Recouvreur v. Carreon*, 940 F. Supp. 2d 1063, 1070 (N.D. Cal. 2013) ($753 is reasonable for a lawyer with over twenty years' experience); *Bond v. Ferguson Enters., Inc*., 2011 WL 2648879, *11-13 (E.D. Cal. June 30, 2011) (discussing

Laffey Matrix which reflects an 8-10 year lawyer rate of $522 and a 20+ year lawyer rate of $709). Thus, an hourly rate of $650 is more than reasonable for Mr. Kaloyanides.

b) Other Factors

Other factors compel the Court to consider a rate at the high end of the prevailing rate in this district for Mr. Kaloyanides including: (1) the novelty and difficulty of the case; (2) the special skill and experience of counsel; (3) the quality of representation; (4) the results obtained; (5) time limitations imposed by circumstances; (6) the "undesirability" of the case. *See Hensley*, 461 U.S. at 430 n.3; *Cabrales*, 864 F.2d at 1464 n. 9.

First, while there are many cases dealing with government-sponsored prayer and religious conduct at schools, only two other Courts have addressed the issues present here—prayer and religious conduct at a School Board Meeting. However, those two cases, *Doe v. Indian River Sch. Dist.*, 653 F.3d 256 (3d Cir. 2011) and *Coles ex rel. Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999), predate the case on which defendants primarily relied here—*Town of Greece v. Galloway*, --- U.S. ---, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014). When there are issues of first impression, the time and effort by counsel is generally far more extensive. *See Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974). Unlike a contract action or standard divorce proceeding, this case involved complex constitutional issues. The Ninth Circuit has recognized that "'[T]he Establishment Clause presents especially difficult questions of interpretation and application.'" *C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 988 (9th Cir. 2011) (citation omitted). *See also Lemon v. Kurtzman*, 403 U.S. 602, 612, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971); *Kreisner v. City of San Diego*, 1 F.3d 775, 779

(9th Cir. 1993) ("Like most cherished social values, the principle of religious freedom that is embodied in the Establishment Clause is easy to proclaim but difficult to define."); *C.F. v. Capistrano Unified Sch. Dist.*, 656 F. Supp. 2d 1190, 1200 n.20 (C.D. Cal. 2009) (observing the "complexity of Establishment Clause jurisprudence"). Other courts have also determined that Establishment Clause cases are "complex" and have adjusted attorneys' fees accordingly. *Robinson v. City of Edmond*, 160 F.3d 1275, 1282 (10th Cir. 1998) ("the Establishment Clause [is] an area notorious for its difficult case law"); *Oxford v. Beaumont Indep. Sch. Dist.*, 2002 WL 34188379, *3 (E.D. Tex. Dec. 19, 2002) ("These hours were necessary because the case involved complex constitutional law issues").

In addition, Mr. Kaloyanides has extensive experience in complex litigation in federal court along with experience in Establishment Clause cases. This experience and expertise supports an even higher than customary rate. *See e.g., Snider v. Peters*, 928 F. Supp. 2d 1113, 1117 (E.D. Mo. 2013) ("In this case, plaintiff engaged in unpopular, yet constitutionally-protected, expression. Attorneys Rothert and Doty [with the ACLU] have expertise in First Amendment litigation, a factor in support of higher fees."). It is not relevant that Mr. Kaloyanides's practice is not primarily in the area of Establishment Clause litigation. In determining the reasonable rates for civil rights cases, the Court is not constrained to considering rates in similar civil rights claims but rather should take into account those rates of all attorneys in the relevant community engaged in equally complex Federal litigation. *See Prison Legal News*, *supra*, 608 F.3d at 455.

Third, Mr. Kaloyanides led the team of attorneys in securing a significant and far-reaching result in plaintiffs' favor—stopping the unconstitutional conduct by leaders of School District infringing on the rights of not only the community but of the children

these leaders are charged with educating and protecting. There can be no dispute that the results achieved were excellent and of substantial benefit to the community. Mr. Kaloyanides and the team of lawyers in this case secured the protection of a core fundamental right of the citizens of this nation—stopping government endorsement and entanglement in religion in public schools and the Board of Education that governs and controls those public schools.

Finally, Establishment Clause litigation is fraught with peril of a personal and professional nature. Such cases are "undesirable" and the personal risk often acts as a deterrent for plaintiffs and counsel. As Justice O'Connor aptly pointed out in rejecting the rationale of Justice Breyer's concurring opinion in *Van Orden*:

> Suing a State over religion puts nothing in a plaintiff's pocket and can take a great deal out, and even with volunteer litigators to supply time and energy, the risk of social ostracism can be powerfully deterrent. I doubt that a slow walk to the courthouse, even one that took 40 years, is much evidentiary help in applying the Establishment Clause.

Van Orden v. Perry, 545 U.S. 677, 747, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005) (O'Connor, J., dissenting).

As demonstrated in his declaration, Mr. Kaloyanides has suffered attack both professionally and personally during the course of this litigation. His professionalism has been attacked based solely on the fact that he does not adhere to any religious beliefs. His children have also been subject to harassment by none other than students and employees within defendants' own School District. The Court should consider that the "undesirability" of this type of case and being associated publicly with such cases has

greater impact when counsel is a member of the community in which the litigation takes place.

All these factors support a lodestar hourly rate for Mr. Kaloyanides on the higher end of the reasonable prevailing rate in the community.

With the total hours Mr. Kaloyanides spent on this case (195.6 hours as of the filing of this Motion), the total fees for Mr. Kaloyanides's work is $127,140.00. Based on the nature and complexity of this case, considering Mr. Kaloyanides's experience and expertise, this total amount is eminently reasonable.

2. *Andrew L. Seidel*

The reasonable lodestar rate for Mr. Seidel is $500.00 per hour. Mr. Seidel earned his J.D from Tulane Law School, *magna cum laude*, and his L.L.M. as the Erik Bluemel International Environmental Law Fellow at Denver Law. He was admitted to practice law in Colorado in 2009 and in Wisconsin in 2012. He has been employed as a staff attorney for the Freedom From Religion Foundation, Inc., since 2011. (Seidel Decl., at ¶¶3, 5, & 13). Plaintiff FFRF is a national non-profit that specializes in upholding the constitutional separation between state and church. (Seidel Decl., at ¶¶2).

Mr. Seidel has extensive experience in Establishment Clause litigation. During his four years with FFRF, he has been involved in fifteen church-state litigation matter—seven of which he was lead counsel for FFRF. (Seidel Decl., at ¶13). Mr. Seidel was the principal author of FFRF's amicus curiae brief before the United States Supreme Court in *Town of Greece, supra*, 134 S.Ct. 1811. (Seidel Decl., at ¶16). Mr. Seidel's experience in First Amendment law Establishment Clause cases also includes pre-litigation and non-litigation intervention into Establishment Clause violations by local

governments, and particularly, school districts. (Seidel Decl., ¶19). Through FFRF, Mr. Seidel has also acted in an advisory capacity to local governments and school districts to assist them in complying with the constitutional requirements of the Establishment Clause and Free Exercise Clause. (Seidel Decl., ¶21). Mr. Seidel frequently lectures and provides Continuing Legal Education seminars relating to church-state issues. (Seidel Decl., ¶¶23-25).

In addition, FFRF has also been the direct subject of threats as a result of this litigation. The hostility, hate-mail, and threats FFRF receives are frequent and most often from members of the majoritarian religion. As set forth in Mr. Seidel's declaration, FFRF has at times been unable to pursue litigation for violations of the Establishment Clause by local governments and school districts because of the difficulty in "(1) finding a local plaintiff brave enough to risk their reputation, livelihood, and health, and that of their family's as well, and (2) finding local counsel who is willing to take whatever impact on their business litigating such an unpopular position will bring." (Seidel Decl., at ¶35). FFRF staff and its attorneys have frequently received threats including death threats resulting from their work on church-state violations. As a result, the entire staff of FFRF undergoes security training including active shooter training. In 2015 alone, Mr. Seidel dealt with over 60 threats that required active law enforcement involvement, and in one instance requiring assistance from the FBI. (Seidel Decl., at ¶¶35-37). And directly related to this litigation, FFRF received specific threats and hate mail. (Seidel Decl., at ¶¶39-40).

a) Prevailing Rate in the Community

The reasonable lodestar rate for Mr. Seidel in this case is $500.00 per hour. Based on the nature of this case and Mr. Seidel's extensive experience and expertise in First Amendment Establishment Clause cases in his seven years of practice, Mr. Seidel should be awarded a higher than average rate for his work on this case. Attorneys with Mr. Seidel's years of experience have received similar awards in this District. *See Rodriguez v. Cty. of Los Angeles*, 96 F.Supp.3d 1012, 1023 (C.D. Cal. 2014) (rate of $600 for 2004 graduate and $500 for a 2008 graduate reasonable in §1983 excessive force case); *Pierce v. Cty. of Orange*, 905 F.Supp.2d 1017, 1036 n.16 (C.D. Cal. 2012) (noting National Law Journal Survey in 2010 for associates with five years of experience at $410 per hour); *Charlebois v. Angels Baseball LP*, 993 F.Supp.2d 1109, 1118 (C.D. Cal. 2012) (in class action litigation, six-year associate rate of $500 per hour deemed reasonable).

b) Other Factors

As discussed above, other factors support a higher rate for Mr. Seidel in this case. The Supreme Court's decision in *Town of Greece*, on which defendants entire defense relied, raised a novel approach to the the question regarding prayer and religious conduct at School Board Meetings. Mr. Seidel brought the special expertise in First Amendment Establishment Clause jurisprudence and provided material support to lead counsel in pursuing this case. The excellent results achieved as well as the special difficulty in pursuing these types of cases (i.e. the clear danger presented to the plaintiffs and counsel) all lend support to awarding Mr. Seidel a rate on the higher end of the prevailing rate for attorneys of his skill and experience in this District. *See Cabrales*, 864 F.2d at 1464 n. 9; *Hensley*, *supra*, 461 U.S. at 430 n.3.

With the total hours Mr. Seidel spent on this case (74.8 hours), the total fees for his work is $37,400.00. Based on the nature and complexity of this case, considering Mr. Seidel's experience and expertise, an award of attorney's fees of this amount for Mr. Seidel is clearly reasonable.

3. *Rebecca Markert*

The reasonable lodestar rate for FFRF's second staff counsel on this case is $550.00 per hour. Ms. Markert is the senior staff attorney at FFRF and Director of FFRF's legal department. (Markert Decl., ¶2). She earned her J.D. from Roger Williams University School of Law in 2008, and was a legislative fellow with the German Bundestag through the Rheinische-Friedrich-Wilhelms-Universitaet Bonn in 1998-1999. She has been practicing law in Wisconsin since being admitted to the Bar in 2008. She was the first full-time staff attorney at FFRF, and has worked continually for FFRF in handling First Amendment Establishment Clause and Free Exercise Clause matters since joining FFRF in 2008. She has personally been involved in over 40 such matters during her work with FFRF. (Markert Decl., ¶¶3, 5, 8-9).

Ms. Markert has coordinated and drafted several *amicus curiae* briefs on FFRF's behalf. Two of her *amicus* briefs were submitted in connection with Establishment Clause cases before the United States Supreme Court. (Markert Decl., ¶12). Ms. Markert also is extensively involved in pre-litigation and non-litigation intervention into Establishment Clause violations by local governments, and particularly, school districts. (Markert Decl., ¶13). As with Mr. Seidel, Ms. Markert frequently lectures and provides Continuing Legal Education seminars relating to church-state issues. (Markert Decl., ¶¶14-15).

As reflected in her time sheets, Ms. Markert performed a supervisory role for Mr. Seidel and managed the litigation for FFRF. She provided research expertise and was involved in the strategy decisions for the litigation. Her work demonstrates that none of Ms. Markert's time was duplicative or unnecessary here, as her time on this case is comparatively modest.

Ms. Markert should receive the higher rate of $550.00 per hour. Ms. Markert is the Director of the legal department for FFRF. Legal directors for non-profit orgainzations in this District have been awarded comparable rates. *See Islamic Shura Council of S. Cal. v. FBI*, 2011 U.S. Dist. LEXIS 143832 (C.D. Cal. Dec. 14, 2011) (deputy legal director for ACLU hourly rate of $550 reasonable in Los Angeles legal market). Ms. Markert has spent the entirety of her 8-year legal career with FFRF handling and litigating First Amendment Establishment Clause and Free Exercise Clause matters.

For the same reasons and considering the same factors as applicable to Mr. Seidel, Ms. Markert should receive the higher-end rate for an attorney of her experience and skill. This case's posture post *Town of Greece* raised different issues than had confronted courts before. The complexity of this case and cases like it, along with the real dangers and threats posed by pursuing these very unpopular and emotionally charged cases, Ms. Markert should be awarded an hourly rate of $550.00.

With her total hours worked on this case (13.5), the Court should award her fees in the amount of $7,425.00.

4. *Roda Torres*

As part of the reasonable and efficient management of this case, lead counsel David Kaloyanides employed his law clerk, Roda Torres, to handle many aspects of the case that would otherwise have been handled by a more senior lawyer at a much higher hourly rate. Ms. Torres has been employed by Mr. Kaloyanides as a law clerk for over a year, and had previously worked for Mr. Kaloyanides on a contract basis. (Torres Decl., ¶1).

Ms. Torres has been an attorney licensed in the State of New York since 2010. She received her J.D. from Ateneo de Manila University, Manila, Philippines in 2006. Ms. Torres practiced federal immigration law representing clients before the U.S. Citizenship and Immigration Services (USCIS) and providing legal advice on federal immigration matters. She conducted research on complex immigration issues, and drafted legal documents and correspondence for submission to the USCIS and the U.S. Department of State. (Torres Decl., ¶¶2-3).

As reflected in her time sheets, Ms. Torres assisted lead counsel David Kaloyanides in intensive legal research, drafting legal research memoranda, assisting in the analysis and formulation of legal arguments, as well as gathered and organized evidence in support of the various motions filed in this case. (Torres Decl., ¶4).

a) Prevailing Rate in the Community

The prevailing rate in the community for law clerks can vary widely depending on the level of experience and the nature of the case itself. Rates for paralegals and law clerks in the $160-$250 range have been found reasonable in complex civil rights cases. *See Pierce, supra*, 905 F.Supp.2d at 1038 n.19 (noting the reasonable range for paralegals and law clerks was $160-$250 per hour, with a median rate in 2008 for

paralegals in Los Angeles at $195 per hour); *Craft v. Cty. of San Bernardino*, 624 F.Supp.2d 1113, 1122-23 (C.D. Cal. 2008) (class action regarding inmate strip searches, law clerk rate of $200 per hour reasonable).

The reasonable rate for Ms. Torres in this case is $200.00 per hour. This is well within the range of rates applied in the Central District for a law clerk. Considering the experience and additional factor that Ms. Torres is a licensed attorney in New York, a higher rate for her work should be applied.

b) Other Factors

As already noted, the other factors the Court should consider in determining an appropriate and reasonable lodestar rate, apply equally to determining Ms. Torres's rate. However, as an employee, she is in a different position regarding a key factor in Establishment Clause cases. Because of the nature of Establishment Clause cases, the hostility toward plaintiffs and their counsel, and the exposure to real threats of harm, attorneys will often decline such cases. However, employees of attorneys do not have the same choice. When counsel decides to embark on such litigation, the entire staff is exposed to the full spectrum of difficulties connected with Establishment Clause cases. And unlike counsel, the staff employees have no choice whether to participate or not. This is particularly true in a small legal practice such as Mr. Kaloyanides's. Employees cannot dictate what projects they take on in their job. They can only decide to remain employed or to seek employment elsewhere.

This is simply one additional consideration the Court should note in determining the reasonable rate for Ms. Torres. Where counsel elects to take on cases of this nature,

it is necessary to attract employees and staff who will likewise commit themselves to the important and emotionally charged nature of these cases.

As demonstrated by Ms. Torres's time sheets, she provided extensive research in support of all the substantive motions and work involved in this litigation. Her work was not duplicative. An examination of the time sheets demonstrates that much of the work that could be was delegated downward from higher billing counsel. Review, analysis and revisions (as well as direct drafting) must necessarily be performed by senior lawyers, but the cost savings involved in using qualified staff such as Ms. Torres demonstrates that this case was managed in a cost-efficient manner.

Ms. Torres's total time billed on this case was 127.2 hours as of the filing of this motion. At the rate of $200.00 per hour, the total amount of her fees is $25,440.00. This represents a reasonable award for a law clerk of her skill and experience in this type of case.

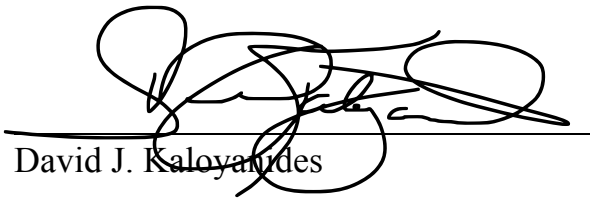
IV. CONCLUSION

As demonstrated, the difficulties in pursuing complex litigation of this type, justify the requested rates for counsel and staff. The time expended in pursuing this case, and in light of the great success and importance of the issues in this case to the public, was reasonable and necessary to achieve this result. The Court should award the rate of $650.00 per hour for Mr. Kaloyanides's work, the rate of $500.00 per hour for Mr. Seidel's work, the rate of $550.00 for Ms. Markert's work, and the rate of $200.00 per hour for the law clerk work of Ms. Torres.

Accordingly, for the foregoing reasons, the Court should award attorney's fees in the total amount of $197,405.00 and costs in the amount of $546.70.

Respectfully submitted,

Dated: March 3, 2016



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