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 11 (Fee Exempt, Gov. Code, § 6103)

12 **IN THE UNITED STATES DISTRICT COURT**  
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 14

15 DEPARTMENT OF FAIR EMPLOYMENT )  
 AND HOUSING, an agency of the State of )  
 16 California, )  
 )  
 17 ) Plaintiff, )  
 18 )  
 vs. )  
 19 )  
 LAW SCHOOL ADMISSION COUNCIL, )  
 20 INC., )  
 )  
 21 ) Defendant. )

**Case No. CV 12-1830-JCS**

**DEPARTMENT OF FAIR  
 EMPLOYMENT AND HOUSING'S  
 NOTICE OF MOTION AND MOTION  
 FOR AWARD OF ATTORNEYS' FEES  
 AND COSTS**

**MEMORANDUM OF POINTS AND  
 AUTHORITIES**

22 UNITED STATES OF AMERICA, )  
 )  
 23 ) Plaintiff-Intervenor, )  
 )  
 24 )  
 vs. )  
 25 )  
 LAW SCHOOL ADMISSION COUNCIL, )  
 26 INC., )  
 )  
 27 ) Defendant. )  
 28

Date: August 17, 2018  
 Time: 9:30 am  
 Location: Courtroom G (15<sup>th</sup> Floor)  
 Judge: Hon. Joseph C. Spero

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**1 NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS**

2 PLEASE TAKE NOTICE that on August 17, 2018 at 9:30 am in Courtroom G of the United  
3 States District Court for the Northern District of California located at 450 Golden Gate Avenue, San  
4 Francisco, California, Plaintiff Department of Fair Employment and Housing (DFEH) will and  
5 hereby does move the Court pursuant to the Court's order holding Defendant Law School Admission  
6 Council, Inc. (LSAC) in contempt of court (Dkt. 278) and the parties' Consent Decree (Dkt. 203), for  
7 an order awarding \$529,341.00 for attorneys' fees and \$4,077.54 for expenses for DFEH's work on  
8 the Motion for Contempt. DFEH also seeks fees for work on this Motion and DFEH will provide the  
9 Court with supplemental time records in its Reply memorandum. This Motion is based on and  
10 supported by the Memorandum of Points and Authorities, the Declarations of Mari Mayeda and  
11 Richard M. Pearl and exhibits thereto, and the record in these proceedings to date.

**12 MEMORANDUM OF POINTS AND AUTHORITIES****13 I. INTRODUCTION AND SUMMARY OF ARGUMENT**

14 This fee motion arises from DFEH's nationwide enforcement of: (1) the parties' Consent  
15 Decree (Dkt. 203); (2) the Consent Decree's Best Practices Panel Report issued pursuant to the  
16 Decree (Dkt. 220) and adopted by the Court; and (3) this Court's Order Granting in Part and Denying  
17 in Part Defendant's Appeal of the Best Practices Panel Report (Dkt. 245). DFEH's motion to enforce  
18 the Court's orders and the Best Practices Panel Report resulted in this Court holding defendant LSAC  
19 in civil contempt. Dkt. 278. The Court's contempt order extends the Consent Decree and Best  
20 Practices for two years nationwide, as well as provides the Decree Monitor with additional  
21 instructions and the DFEH with additional document review rights. The contempt order also states  
22 that "DFEH is entitled to its fees and costs pursuant to Paragraph 21(b) of the Consent Decree . . . ."  
23 Contempt Order (Dkt. 278) at 53:2.

24 DFEH now seeks a reasonable award of attorneys' fees and costs. Specifically, DFEH seeks  
25 compensation for a total of 938.6 hours for one senior attorney, two mid-level attorneys, and one law  
26 fellow. In calculating the total compensable hours for the request, DFEH has exercised extensive  
27 billing judgment and eliminated hundreds of attorney hours. Approximately 832.8 hours were  
28 eliminated from the request for those four time keepers for which contemporaneous time records

1 were maintained. In addition, DFEH is not seeking compensation for time expended by five other  
 2 DFEH attorneys. In light of the excellent result obtained and the billing judgment exercised, DFEH's  
 3 request is well within the bounds of reasonableness. The fee petition should be granted.

## 4 **II. FACTUAL BACKGROUND AND PROCEEDINGS**

5 The DFEH filed this systemic discrimination case, in which the United States intervened,  
 6 challenging LSAC's practice of requiring excessive documentation from candidates with disabilities  
 7 for testing accommodations on the Law School Admission Test (LSAT). Contempt Order at 2:3-8.  
 8 After six in-person and three telephonic settlement conferences (Dkt. 154, 161, 177, 184, 190, 194,  
 9 195, 196, 197), the Parties agreed to a nationwide Consent Decree, which was adopted as an order of  
 10 this Court on May 29, 2014. *See* Decree (Dkt. 203).

11 The Decree "require[d] certain changes to [LSAC's] procedures [and] delegated aspects of  
 12 those changes to a panel of experts selected by the Parties" called the Best Practices Panel. Appeal  
 13 Order (Dkt. 245) at 1:20-24. Under Paragraph 7 of the Decree, all recommendations set forth in the  
 14 Best Practices Panel's Final Report would be binding on LSAC except when LSAC challenged a  
 15 specific recommendation and the Court upheld that challenge. Decree, ¶7(d)(v). Thus, the Court's  
 16 order automatically incorporated every Panel recommendation by default unless it was both  
 17 challenged by LSAC and rejected by the Court. To monitor LSAC's implementation of the Best  
 18 Practices recommendations and the Decree, a Monitor was required to conduct an "audit" of LSAC's  
 19 compliance. Decree, ¶25.

20 Contrary to the requirements of the Decree, the Monitor's "audit" was merely a conclusory  
 21 report. It lacked sufficient explanation, detail or analysis, and ultimately concluded that LSAC was  
 22 in substantial compliance with the Decree and the Panel Report. Contempt Order at 17:9-10. Fatal to  
 23 the reliability and validity of the Monitor's audit was his determination that "*going behind the*  
 24 *numbers would be unnecessarily burdensome and unwarranted.*" Carrasco Decl. (Dkt. 249-2), ¶30,  
 25 Ex. 9 (Final Monitor's Report) at 5-6 n.6 (emphasis added).<sup>1</sup> Unsurprisingly, the Monitor's "audit"  
 26 conclusions overlooked many compliance failures DFEH later identified for this Court.

27  
 28 <sup>1</sup> A detailed overview of the case is contained in this Court's prior orders. *See* Appeal Order at 2:6-7:8; Contempt Order at 2:1-9:28.



1 Because the Monitor “found LSAC to be in substantial compliance with the topics of the  
2 Consent Decree and Panel Report that he was called upon to evaluate” (Contempt Order at 17:9-10)  
3 this was not a case where plaintiffs merely had to ask the Court to enforce the findings and  
4 conclusions of the Decree Monitor. Instead, the work on the motion to enforce the Court’s orders and  
5 the Best Practices Panel Report began with the review of California test taker files at LSAC’s  
6 Newtown, Pennsylvania headquarters. From this review, DFEH uncovered noncompliant practices  
7 which led to its contempt motion and the Court’s contempt order. For example, the document review  
8 revealed that LSAC used its “50% email” practice as early as January 2016 the “50% email”  
9 appeared on a 2016 list as one of LSAC’s standard forms of communication with test takers.  
10 Additionally, the document review uncovered information regarding the “no decision” practice, the  
11 use of “white out,” and fact that candidates who accepted “50% emails” were reported to the United  
12 States, the DFEH, and the Monitor as individuals whose requests were “granted in full” on LSAC’s  
13 reporting mandated by the Decree – practices upon which the Court relied in holding Defendant in  
14 contempt. *See, e.g.*, Contempt order at 36:6-9 [Through the 50% email “LSAC violated the Consent  
15 Decree’s requirement that it ‘implement the Best Practices’”]; 36:13-18 [LSAC’s reporting of 50%  
16 emails as granted in full “also violated the Consent Decree”]; 37:18-20 [LSAC’s use of the “no  
17 decision” category “constitutes a violation of Paragraphs 8(a) and 23 of the Consent Decree”]; 40:25-  
18 41:3 [“Finally, the Court agrees with DFEH that LSAC’s practice . . . of using white-out to alter its  
19 internal forms . . . violates LSAC’s obligation to ‘maintain appropriate supporting records for  
20 information contained in the Reports . . . .”].

21 Following review of documents at LSAC’s headquarters and pursuant to the Decree, the  
22 United States and DFEH developed their position statement, and transmitted that statement to LSAC  
23 in a notice letter. Carrasco Decl., ¶43, Ex. 15 (May 17, 2017 Notice Letter). As required by the  
24 Decree, the parties then engaged in over five months of meet and confer sessions which included  
25 lengthy phone calls and the exchange of detailed position statements. Carrasco Decl., ¶¶44-51, Ex.  
26 16 (Meet and Confer Communications), 19 (DFEH’s Final Position Statement). In total, the parties  
27 met and conferred over the course of five telephonic sessions and over 60 pages of meet and confer  
28 correspondence. Carrasco Decl., ¶¶ 44-51, Ex. 16, 19. While progress was made during this meet

1 and confer process, at the close of the fifth meet and confer session a number of issues remained  
2 unresolved. In particular, the parties were unable to resolve the core issues of how long the Decree  
3 should be extended, and whether any Decree extension would also extend the Best Practices Panel  
4 Final Report. Mayeda Decl., ¶15.

5 At the conclusion of the meet and confer process, DFEH filed its contempt motion (Dkt. 249).  
6 To obtain the relief sought, DFEH had to prove by “clear and convincing evidence” that LSAC had  
7 violated “a specific and definite order of the court.” Dkt. 268 at 14:13-14 (LSAC’s Opposition to  
8 DFEH’s Contempt Motion). DFEH analyzed extensive multi-year data for the motion, as well as  
9 application of the Consent Decree (Dkt. 203); the Best Practices Panel’s 30-page single-spaced Final  
10 Report (Dkt. 220); and the Court’s 44-page order approving in part the Best Practices (Dkt. 245).  
11 Evidence supporting the motion was included in a 54-paragraph declaration by DFEH co-lead  
12 counsel Ms. Carrasco including 175 pages of exhibits. Mayeda Decl., ¶15; *see also* Carrasco Decl.  
13 The motion was also supported by declarations of test takers who had encountered LSAC’s violations  
14 and the Court cited these declarations in its order. *See, e.g.*, Contempt Order at 11: 27-12:4 (“one  
15 candidate, Russell Dean Harris felt pressured to accept the lesser option offered by LSAC, attempted  
16 to appeal LSAC’s decision” and “was told the LSAC would not provide an appeal process for its  
17 determination this his documentation was not sufficient”; Dkt. 287 at 12:4-8 (“Another candidate,  
18 Phillip Movaghar, accepted LSAC’s proposal to revise his request and forego a requested  
19 accommodation because he felt that he had no other choice...”); Dkt. 278 at 35:26-28 (Kallman  
20 declaration “supports the conclusion that LSAC meant what it said when it told candidates, including  
21 those eligible for accommodation under Paragraph 5(a), that they would receive no accommodation if  
22 they did not accept one of the options offered.”); *see also International Brotherhood of Teamsters v.*  
23 *United States* (1977) 431 U.S. 324, 339. (testimony of individual victims of discrimination brings  
24 illegal practices “convincingly to life”).

25 Following the filing of the contempt motion, the parties continued exchanges regarding  
26 potential resolution of the motion. DFEH reviewed and responded to LSAC’s opposition brief (Dkt.  
27 268) which was submitted along with the 109-paragraph declaration of LSAC’s Manager of  
28 Accommodated Testing Kim Dempsey with over 200 pages of exhibits, as well as the 36-paragraph

1 declaration of LSAC counsel Caroline Mew with 150 pages of exhibits. As LSAC's opposition brief  
2 relied on nationwide data, DFEH was required to expand its review and analysis to include the  
3 voluminous nationwide data sets. Mayeda Decl., ¶15.

4 DFEH filed a reply brief with additional declarations and evidence (Dkt. 271). Co-lead  
5 counsel Ms. Carrasco's declaration included an additional 19 pages of exhibits (Dkt. 271-1). A  
6 declaration of test taker Aidee Campa who filed a complaint with the DFEH against LSAC for denial  
7 of accommodations after the DFEH moved for contempt was also submitted to the Court (Dkt. 271-  
8 2). The Court also cited to Ms. Campa's declaration in the contempt order. Contempt Order at 13:1-  
9 3 ("Aidee Campa Escorza, who is completely blind . . . was told by LSAC that she would have to  
10 take the test without accommodations, and with no opportunity for appeal or reconsideration, after  
11 she twice inadvertently failed to include the first page of her candidate form . . ."). DFEH then  
12 prepared for and attended the hearing on the contempt motion.

13 LSAC itself acknowledged the significant work required for the contempt motion, as well as  
14 the importance and complexity of the evidence at issue. When requesting additional time to respond  
15 to DFEH's contempt motion, LSAC noted it would take "a significant amount of time to respond to a  
16 pleading of this nature." (Dkt. 259-1 at 1:23-24). LSAC also represented to the Court that the motion  
17 required understanding of "the long history of the case, the issues raised therein and the intricacies of  
18 the Consent Decree." (Dkt. 261 at 4:17-18). Again, in separate correspondence with DFEH, LSAC  
19 acknowledged "the importance and complexity of the underlying issues" raised in the contempt  
20 motion. Mayeda Decl., ¶16, Ex. E (Email from Burgoyne to Trasovan [Nov. 8, 2017, 9:27 a.m.]).

21 The DFEH provided LSAC with a statement of DFEH's work on the motion to enforce the  
22 Consent Decree on May 7, 2018. Mayeda Decl., ¶23, Ex. G (Email and letter to LSAC dated May 7,  
23 2018). Upon additional review of DFEH time records, DFEH discovered a clerical error that resulted  
24 in miscalculating the total number of Attorney Carrasco's hours expended on work to enforce the  
25 Decree. Mayeda Decl., ¶23. Additionally, DFEH decided to further eliminate additional hours from  
26 its request. DFEH provided LSAC an email amending the hours eliminated and hours requested on  
27 July 5, 2018. Mayeda Decl., ¶23, Ex. H (Email from Mayeda to LSAC counsel [July 5, 2018, 11:21  
28 a.m.]).

### III. ARGUMENT

1  
2 This Court has already determined that DFEH is entitled to an award of fees and costs  
3 (Contempt Order at 53:2-4); the only question that remains is the amount of the award. Here,  
4 California law governs a determination of whether plaintiff's motion for fees is reasonable. *See Klein*  
5 *v. City of Laguna Beach*, 810 F.3d 693, 701 (9th Cir. 2016) ("federal courts apply state law for  
6 attorneys' fees to state claims because of the Erie doctrine" (internal footnote omitted)). This is  
7 because "[a] consent decree is construed with reference to ordinary contract principles of the state in  
8 which the decree is signed." *Gates v. Gomez*, 60 F.3d 525, 530 (9th Cir. 1995); *see Collins v.*  
9 *Thompson*, 679 F.2d 168, 170 (9th Cir. 1982) ("The law of the situs state, in this case Washington,  
10 should be applied."). Since the Decree was entered into in California, California law governs this  
11 Court's determination of what fees shall be awarded pursuant to the Decree. "Nevertheless, the Court  
12 may still look to federal authority for guidance in awarding attorneys' fees." *MacDonald v. Ford*  
13 *Motor Co.*, No. 13-cv-2988-JST, 2016 WL 3055643, at \*2 (N.D. Cal. May 31, 2016).

14 Under California law, the lodestar method is used for determining a fee award; thus, in  
15 assessing "reasonable" attorneys' fees, courts begin with a touchstone or lodestar figure where  
16 "[e]ach attorney's reasonable hourly rate is determined, and then that rate is multiplied by the hours  
17 reasonably spent in achieving the plaintiff's victory." *Chavez v. City of Los Angeles*, 47 Cal.4th 970,  
18 985 (2010); *Serrano v. Priest* 20 Cal.3d 25 (1977); *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 321  
19 (1983). "The result is the lodestar, which may be adjusted up or down to determine an appropriate  
20 award in the individual case." *Chavez*, 47 Cal.4th at 985. Then, "[i]n the absence of special  
21 circumstances which would make the adjusted lodestar amount unjust, it should be awarded to a  
22 prevailing plaintiff's attorneys." *Id.*

#### A. THE DFEH'S ATTORNEYS' FEES AND COSTS ARE REASONABLE

23  
24 After reviewing its contemporaneous time records and exercising billing judgment, DFEH  
25 requests \$529,341.00 for 938.6 hours of attorney work and \$4,077.54 in costs. DFEH is also entitled  
26 to fees for work on this motion. It will supplement the fee request with the additional time spent on  
27 this motion in its reply papers for the Court. *See, e.g., Davis v. City & County of San Francisco*, 976  
28 F.2d 1536, 1544 (9th Cir. 1992).

1           **1. The Requested Rates are Reasonable in light of the Experience, Expertise and**  
2 **Skill of Counsel in this Complex Litigation**

3           **a. The DFEH is entitled to prevailing market rates in the San Francisco Bay**  
4 **Area:** The reasonable hourly rates applicable to this case are the prevailing market rates for  
5 comparable legal services in the community where the court is located – in this case San Francisco,  
6 California. *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). In accordance with market rates in the  
7 San Francisco Bay Area, DFEH has requested rates “in line with” the rates charged by attorneys of  
8 reasonably comparable experience, expertise, and skill for reasonably comparable work in the  
9 district. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973 (9th Cir. 2008) (district court directed to  
10 determine “the prevailing hourly rate in the [forum community] for work that is similar to that  
11 performed in this case, by attorneys with the skill, experience and reputation comparable to that of  
12 [plaintiff’s] attorneys”); *Hensley v. Eckerhart*, 461 U.S. 424, 430 n. 4 (1983); *Blum v. Stenson*, 465  
13 U.S. 886, 898-99 (1984); *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986).  
14 Such prevailing market rates are measured against the fair market value of the work performed by  
15 commercial firms for reasonably similar federal litigation, *Davis*, 976 F.2d at 1547, as well as the  
16 rates approved by courts for comparable work in similar cases. *See* Pearl Decl. at ¶12 (discussing  
17 court-approved 2017 rates ranging from \$500 to \$1,200 per hour for midlevel attorneys to senior  
18 attorneys, respectively, in similar litigation this district).

19           The prevailing market rate standard applies equally to nonprofit, private or public counsel.  
20 *See Blum*, 465 U.S. at 895-96 (“Reasonable fees” in a federal civil rights suit “are to be calculated  
21 according to the prevailing market rates in the relevant community, regardless of whether plaintiff is  
22 represented by private or nonprofit counsel.”); *Davis*, 976 F.2d at 1547 (*affirming U.S. v. City &*  
23 *County of San Francisco*, 748 F.Supp. 1416, 1431 (N.D. Cal. 1990) (plaintiff’s non-profit attorneys  
24 entitled to rates charged by “corporate attorneys of equal caliber”). Government attorneys like DFEH  
25 counsel are entitled to prevailing market rates. *In re Tobacco Cases I*, 193 Cal.App.4th 1591, 1604-  
26 05 (2011) (finding services of assistant attorney general were properly valued based on market rates).  
27 Differences in how the attorneys seeking fees charge for their services do not alter the analysis. *See*  
28 *Lolley v. Campbell*, 28 Cal.4th 367, 374 (2002) (“Our appellate courts have repeatedly affirmed

1 awards of attorneys fees under various fee-shifting provisions for legal services provided at no  
 2 personal expense to the client.”); *Folsom v. Butte County Assn. of Governments*, 32 Cal.3d 668, 681  
 3 (1982) (rejecting the contention “that plaintiffs incurred no personal liability for services of their  
 4 attorneys, several of whom were employed by agencies funded primarily with public monies”).

5           **b. DFEH counsel’s rates here are well in line with the rates charged by San**  
 6 **Francisco attorneys of reasonably comparable experience, expertise, and skill:** DFEH counsel’s  
 7 experience, expertise, and skill support the market rates requested by the Department. See Mayeda  
 8 Decl. at ¶¶2-5, 7-8; Pearl Decl. at ¶¶10-12. DFEH counsel have substantial experience in litigating  
 9 complex employment and civil rights actions. See Mayeda Decl. at ¶¶2-5. In addition, the rates  
 10 requested are well within the range of rates charged by skilled counsel and approved by courts in the  
 11 Bay Area in similar complex civil litigation. See Pearl Decl. at ¶¶10-12. Therefore, DFEH counsel’s  
 12 hourly rates are “in line” with prevailing market rates and are reasonable.

13 **Mari Mayeda, DFEH Associate Chief Counsel for Systemic Litigation**

14           Mari Mayeda is the Associate Chief Counsel for Systemic Litigation at the DFEH and has  
 15 over three decades of experience litigating class action and complex employment and discrimination  
 16 matters mostly in the federal courts. She specializes in complex civil rights litigation. She was lead  
 17 counsel for the California plaintiffs in the Denny’s restaurant chain race discrimination case and in  
 18 gender discrimination cases involving promotion of women at the Save Mart and Albertson’s grocery  
 19 chains. With her former law partners, Ms. Mayeda represented plaintiffs in recovering over \$200  
 20 million from the State Farm Insurance Companies for failing to hire female sales agents. She served  
 21 as co-counsel in disability access class action cases against the Burger King and Taco Bell restaurant  
 22 chains. She served as a member of the Ninth Circuit Task Force on Racial, Religious and Ethnic  
 23 Fairness, chairing the Task Force’s Civil Litigation Sub-Committee, has served as a Lawyer Delegate  
 24 to the Ninth Circuit Judicial Conference, and has served by appointment of the U.S. District Court for  
 25 the Northern District of California on a number of court committees. She is a 1983 graduate cum  
 26 laude of Harvard Law School. Following law school, she clerked for the California Supreme Court.  
 27 Mayeda Decl., ¶2, Ex. A.

28 ///

**Joni Carrasco, DFEH Counsel**

Joni Carrasco is co-lead counsel for the Department in the remedies phase of this case. In addition, Ms. Carrasco has represented the Department as lead counsel in over 20 mediations and litigation matters including *DFEH v. City of Hanford*, an employment discrimination case which settled for \$237,500 plus injunctive relief, and *DFEH v. 255 Ave. 55, LLC, et al.*, a reasonable accommodation housing discrimination case which resolved for \$75,000 plus injunctive relief. She is a 2012 graduate of the University of California, Irvine School of Law, joining the DFEH in the first class of Civil Rights Fellows. Mayeda Decl., ¶3, Ex. B.

**Irina Trasovan, DFEH Counsel**

Irina Trasovan has worked on this matter since 2013 taking responsibility for many expert witness issues. Ms. Trasovan is co-lead counsel for the Department in *Dept. of Fair Employment and Housing v. Airbnb, Inc.*, an investigation and settlement involving racial discrimination in housing on the Airbnb platform. In addition, Ms. Trasovan has represented the Department as lead counsel in over 20 mediations and litigation matters, obtaining damages and injunctive relief for individuals who have experienced discrimination. Ms. Trasovan represented the Department as trial counsel in *Dept. of Fair Employ. & Housing v. David Grimberg*, a sexual harassment case against a landlord, obtaining a \$45,000 judgment for the tenant and injunctive relief as well as an award of attorneys' fees at market rates. She is a 2012 graduate of the University of California, Irvine School of Law, joining the DFEH in the first class of Civil Rights Fellows. Mayeda Decl., ¶4, Ex. C.

**Kaitlin Toyama, DFEH Legal Fellow**

Kaitlin Toyama is a 2017 graduate of the University of California, Hastings College of the Law where she externed in the United States District Court for the Northern District of California and also represented clients in the Ninth Circuit Court of Appeals and San Francisco County Superior Court. Ms. Toyama performed legal research on the contempt motion, drafted portions of the briefs, worked with test-takers, and drafted and finalized test taker declarations. DFEH is billing Ms. Toyama as a law clerk even though in 2017 Ms. Toyama became a member of the California bar. She is a current Civil Rights Fellow. Mayeda Decl., ¶5, Ex. D.

1           Given their credentials and experience, the 2018 requested hourly rates of \$850 per hour for  
2 Ms. Mayeda, \$425 for Ms. Carrasco and Ms. Trasovan, and \$290 for Mr. Toyama are reasonable.

3                   **c.       DFEH counsel’s rates here are well in line with the rates approved in**  
4 **similar cases as well as rates charged by other San Francisco Bay Area law firms:** Richard Pearl  
5 is widely recognized as a leading expert in the field of court awards of attorneys’ fees and costs. He  
6 is the author of CEB’s California Attorney Fee Awards, 2d ed., which has been cited by the  
7 California appellate courts in determining fees issues. Pearl Decl., ¶ 2. Mr. Pearl specializes in  
8 issues related to court-awarded attorneys’ fees, including the representation of parties in fee litigation  
9 and appeals, serving as an expert witness, and serving as a mediator and arbitrator in disputes  
10 concerning attorneys’ fees and related issues. His expert opinion on reasonable attorneys’ fees has  
11 been relied upon by many federal and state courts. Pearl Decl., ¶ 6. As to the hourly rates requested  
12 by DFEH (\$850/hour for Ms. Mayeda, \$425 for Ms. Carrasco and Ms. Trasovan, and \$290 for Ms.  
13 Toyama), Mr. Pearl testifies: “I am of the opinion that the hourly rates requested by Petitioner’s  
14 attorneys are well within (if not below) the range of non-contingent market rates charged for  
15 reasonably similar services by San Francisco Bay Area attorneys of reasonably similar qualifications  
16 and experience.” Pearl Decl., ¶11. Mr. Pearl supports his conclusion with rates in other cases as well  
17 as rates charged by other San Francisco Bay Area law firms. Pearl Decl., ¶¶12-14.

18           The requested rates are consistent with rates awarded or approved by the courts for DFEH  
19 counsel. *See, e.g., Dept. of Fair Employ. & Housing v. David Grimberg*, No. SC 121412 (Los  
20 Angeles County Superior Court) (Awarding Ms. Trasovan’s then current 2014 hourly rate of  
21 \$325/hour); *DFEH v. M & N Financing Corp.*, No. BC591206 (Los Angeles County Superior Court)  
22 (2018 award of sanctions to DFEH at \$400/hour for 2013 law school graduate); *Voting Rights*  
23 *Coalition, et al. v. Wilson et al.*, Case Nos. C-94-20860 JW, C-95-20042 JW (N.D. Cal. 1997)  
24 (awarding Ms. Mayeda’s then current hourly rate); *Cordellos v. City and County of San Francisco*,  
25 No. 952520 (San Francisco Superior Court, 1995) (awarding Ms. Mayeda’s then current hourly rate);  
26 *NORML v. Mullen*, No. C83-4037 RPA (N.D. Cal. 1988) (awarding Ms. Mayeda’s then current  
27 hourly rate); *Reviera v. Evans*, No. H1369139 (Alameda County Superior Court, 1992) (awarding  
28 Ms. Mayeda’s then current hourly rate). Mayeda Decl., ¶7.



1 Ms. Mayeda's rate has also been approved by the courts on numerous occasions as part of the  
 2 court's obligation to review the fairness of a class action settlement. Some examples of cases where  
 3 Ms. Mayeda's rate was approved by the court where she was lead counsel include *Ridgeway v.*  
 4 *Denny's*, No. C-93-20202 JW (N.D. Cal.); *Babbit v. Albertson's*, No. C-92-1883 SBA (N.D. Cal.),  
 5 and *Herring v. SaveMart*, No. C-90-3571 EFL (N.D. Cal.). Examples where her rate was approved in  
 6 cases in which she was co-counsel include *Castaneda v. Burger King*, No. CV-08-4262 WHA (N.D.  
 7 Cal.) and *Vallabhapurapu v. Burger King*, No. CV-11-00667 WHA (N.D. Cal.) (approving attorney  
 8 rates of \$335 to \$825 per hour including Ms. Mayeda's then current 2014 rate of \$750 per hour).  
 9 Mayeda Decl., ¶8.

## 10 2. The Number of Hours Claimed Is Reasonable

11 The DFEH is entitled to all hours reasonably spent on the contempt motion: "Where a  
 12 plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.  
 13 Normally, this will encompass all hours reasonably expended on the litigation . . ." *Hensley*, 461  
 14 U.S. at 435; Decree at ¶21(b) ("The DFEH shall be entitled to reasonable attorney fees and costs for  
 15 work performed on any prevailing motion to enforce the Consent Decree."). Hours are reasonable if  
 16 they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an  
 17 attorney traditionally is compensated by a fee-paying client." *Hensley*, 461 U.S. at 431. A fee award  
 18 should be "fully compensatory [and] absent circumstances rendering the award unjust, an attorney fee  
 19 award should ordinarily include compensation for all the hours reasonably spent." *Ketchum*, 24  
 20 Cal.4th at 1133.

21 a. **The DFEH's fee request includes the legal work necessary to successfully**  
 22 **enforce the Consent Decree:** In determining a "reasonable attorney fee" for a prevailing party – the  
 23 wording used in the Consent Decree – it is well-settled that services that were necessary and useful to  
 24 the successful action, including investigation or pre-complaint work, are compensable. *See, e.g.,*  
 25 *Stokus v. Marsh*, 217 Cal.App.3d 647, 654-56 (1990) (affirming fee award for services rendered on  
 26 two prior dismissed complaints when services were necessary and useful to successful action); *Best v.*  
 27 *California Apprenticeship Council*, 193 Cal.App.3d 1448, 1461 (1987) (permitting recovery for  
 28

1 preliminary administrative proceedings because they were the first step in the litigation and were  
2 “useful and of a type ordinarily necessary” to litigation).

3 Here, DFEH counsel undertook significant and necessary work to successfully prosecute the  
4 contempt motion. Extensive meet and confer work was required, and indeed was a prerequisite to  
5 filing the motion to enforce the Consent Decree. As such, DFEH’s work on the five-month meet and  
6 confer process constitutes time compensable under a reasonable attorneys’ fees standard. *See New*  
7 *York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 71 (1980) (fees incurred during mandatory pre-  
8 litigation administrative proceedings are compensable); *Native Village of Quinagak v. United States*,  
9 307 F.3d 1075, 1083 (9th Cir. 2002) (plaintiffs are entitled to fees and cost arising from efforts to  
10 exhaust required administrative remedies).

11 Moreover, the significant work required for the contempt motion is undisputed. LSAC itself  
12 has repeatedly acknowledged it. When requesting additional time to file the opposition to the motion,  
13 even though LSAC did not bear the burden of proof, LSAC noted it would take “a significant amount  
14 of time to respond to a pleading of this nature” (Dkt. 259-1 at 1:23-24). It further noted that the  
15 motion required understanding of “the long history of the case, the issues raised therein and the  
16 intricacies of the Consent Decree” (Dkt. 261 at 4:17-18). LSAC also acknowledged “the importance  
17 and complexity of the underlying issues” raised in the contempt motion. Mayeda Decl., ¶16, Ex. E  
18 (Email from Burgoyne to Trasovan [Nov. 8, 2017, 9:27 a.m.]).

19 In similar cases, courts have awarded fees for hundreds of compensable hours to attorneys  
20 who have litigated contempt motions successfully. *See e.g. Kelly v. Wengler*, 822 F.3d 1085, 1093-  
21 95 (9th Cir. 2016) (affirming contempt motion attorneys’ fees award of 844.8 hours plus 174.1 hours  
22 performed by legal assistants). For example, in *Bernardi v. Yuetter*, the Ninth Circuit affirmed an  
23 award of 700 hours to counsel for their successful contempt motion plus an additional 400 hours for  
24 work performed by law clerks and paralegals. *Bernardi v. Yuetter*, 951 F.2d 971, 975 (9th Cir. 1991)  
25 (affirming in relevant part *Bernardi v. Yuetter*, 754 F.Supp. 743 (N.D. Cal. 1990)).

26 Moreover, counsel in *Bernardi* were enforcing a consent decree monitor’s recommendation of  
27 contempt and their hours claimed were cut in half after the court determined that counsel had  
28 unnecessarily duplicated the monitor’s work. *Id.* at 974. Even then, counsel was still compensated

1 for 1,100 hours. *Id.* In comparison, here DFEH had to spend hundreds of hours on the contempt  
2 motion because the Monitor did not mention or report on the Consent Decree violations discovered  
3 by DFEH. In other cases where parties were required to monitor a consent decree, courts have  
4 awarded hours in the thousands. *See e.g., Keith v. Volpe*, 833 F.2d 850 (9th Cir. 1987) (affirming  
5 supplemental attorneys' fees for 3,872.7 hours performed by thirteen attorneys and legal staff).

6 **b. The DFEH obtained an excellent result in a complex case where the DFEH**  
7 **had to prove contempt in the face of an adverse report from the Decree monitor:** In this case,  
8 the DFEH moved for and obtained nationwide relief from the Court. Where, as here, a "plaintiff has  
9 obtained excellent results, his attorney should recover a fully compensatory fee. Normally, this will  
10 encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional  
11 success an enhanced award may be justified." *Hensley*, 461 U.S. at 435. "[T]he most critical factor  
12 [in determining whether plaintiff has obtained an excellent result] is the degree of success obtained."  
13 *Id.* at 436. And where plaintiff has obtained the vast majority of the relief requested, it is often  
14 justified for a court to award full compensation. *Feminist Women's Health Center v. Blythe*, 32  
15 Cal.App.4th 1641, 1674 n.8 (1995) [citing *Hensley*, 461 US at 435-36]. Similarly, DFEH should  
16 recover full compensation for its work on the successful motion.

17 DFEH's motion for contempt did indeed yield an excellent and exceptional result. This Court  
18 agreed with the DFEH's assessment that LSAC's practices violated the Decree. The Court also  
19 agreed that the appropriate remedy was to order the Decree and Best Practices extended by two years  
20 and granted the DFEH's request for additional days to review files at LSAC's headquarters. While  
21 the Court did not order the removal of the Monitor, the Court agreed with the DFEH that the Monitor  
22 did not adequately perform his job and made clear what exactly is expected of the Monitor moving  
23 forward. The contempt motion, brought by DFEH on its own, achieved excellent results and DFEH  
24 should be provided with full compensation.

25 **c. The DFEH exercised billing judgment:** The DFEH exercised considerable  
26 and extensive billing judgment. DFEH generally did not seek compensation for more than two  
27 attorneys at any hearing, meeting, or conference even though the use of multiple attorneys is  
28 permissible and some overlap of efforts is acceptable. *See e.g. Democratic Party of Washington*

1 *State v. Reed*, 388 F.3d 1281, 1286-87 (9th Cir. 2004) (“Participation of more than one attorney does  
2 not necessarily amount to unnecessary duplication of effort,” and given the complexity and  
3 importance of the case, one senior attorney supported by two junior attorneys was reasonable);  
4 *Horsford v. Board of Trustees*, 132 Cal.App.4th 359, 396-97 (2005) (court abused its discretion in  
5 rejecting verified time records simply because three attorneys had billed for reviewing the same  
6 discovery request); *Nadarajah v. Holder*, 569 F.3d 906, 925 (9th Cir. 2009) (fees for time spent  
7 conferencing and discussing among counsel is reasonable); *Campbell v. National Passenger R.R.*  
8 *Corp.*, 718 F.Supp.2d 1093, 1105 (N.D. Cal. 2010) (time spent conferencing is not excessive); *Elder*  
9 *v. National Conference of Bar Examiners*, No. C 11-00199 SI, 2011 WL 4079623, at \*3 (N.D. Cal.  
10 Sept. 12, 2011) (hours spent reviewing documents others had drafted are not excessive or  
11 unreasonable).

12 Additionally, DFEH eliminated a substantial amount of time from the fee request for other  
13 attorneys working on the case. DFEH is not requesting any compensation for the legal research time  
14 spent by a junior attorney (former federal district court law clerk) who performed the initial legal  
15 research on the contempt standard. DFEH has not included the time spent by Assistant Chief  
16 Counsel Paula Pearlman, an expert in disability rights law and litigation who assisted in reviewing  
17 the briefs and in preparing staff counsel for the oral argument. DFEH has not requested  
18 compensation for the time of Assistant Chief Counsel Nelson Chan who assisted in preparation for  
19 the oral argument. DFEH exercised billing judgment and has excluded the time spent on the Motion  
20 in Limine. DFEH has not requested time for Senior Staff Counsel Sheila Thomas, an experienced  
21 civil rights litigator, or for Civil Rights Fellow Jenna Kingkade. Mayeda Decl., ¶17. In addition to  
22 eliminating all the time of these five attorneys, DFEH also eliminated from this request 832.8 hours  
23 for which contemporaneous time records have been maintained for attorneys Mayeda, Carrasco,  
24 Trasovan, and Toyama. Mayeda Decl., ¶¶17-18.

25 Eliminating the time spent by multiple attorneys was an area of focus in our exercise of  
26 billing judgment. Mayeda Decl., ¶¶ 18, 25. Thus, in this case the number of counsel does not  
27 constitute a basis for a reduction of the request. *See Fair Housing of Marin v. Combs*, 285 F.3d 899,  
28 908 (9th Cir. 2002) (noting that counsel “exercised considerable billing judgment,” and finding

1 counsel’s hours justified by the “quality” of the papers, the amount of “research they evidence,” and  
2 “detailed and fact specific work” required to prepare them).

3 The DFEH staffed this case efficiently. Only one senior attorney and two mid-level attorneys  
4 worked on the case for Plaintiff. Those attorneys carefully divided work between them, avoiding any  
5 unnecessary duplication and utilizing a law fellow when it was feasible. Mayeda Decl. ¶15. Only  
6 time that is “unnecessarily” duplicative is non-compensable. *See Moreno v. City of Sacramento*, 534  
7 F.3d 1106, 1113 (9th Cir. 2008) (“It is only where the lawyer does *unnecessarily* duplicative work  
8 that the court may legitimately cut the hours.”) (emphasis in original). No such “unnecessarily  
9 duplicative work” occurred here.

### 10 3. DFEH’s Lodestar Request is Reasonable in Light of Awards in Similar Cases

11 DFEH makes the following lodestar request:

12	ATTORNEY	RATE	HOURS ELIMINATED	HOURS REQUESTED	SUBTOTAL
13	Mari Mayeda	\$850.00	139.9	355	\$301,750.00
14	Joni Carrasco	\$425.00	191.8	316	\$134,300.50
15	Irina Trasovan	\$425.00	276.8	116.2	\$49,385.00
16	Kaitlin Toyama	\$290.00	224.3	151.4	\$43,906.00
17	<b>TOTAL FEES:</b>				<b>\$529,341.00</b>

18 DFEH’s requested lodestar is consistent with awards in similar complex litigation in the  
19 Northern District of California. Recent examples include:

20 *Huynh v. Hous. Auth. of Santa Clara*, No. 14-cv-02367-LHK, 2017 WL 1050539 (N.D. Cal.  
21 Mar. 17, 2017), a tenant class action challenging the Housing Authority’s policy regarding the  
22 accommodation of households with family members with disabilities in which the court awarded  
23 2017 hourly rates of \$860 for a 1996 law school graduate, \$530 for a 2011 law school graduate, \$330  
24 for a 2016 law school graduate, and \$325 for a law fellow. Pearl Decl., ¶12(3);

25 *Nitsch v. Dreamworks Animation SKG, Inc.*, No. 14-cv-04062-LHK, 2017 WL 2423161  
26 (N.D. Cal. June 5, 2017), an antitrust class action brought by former employees of the defendants, in  
27 which the court found the following hourly rates reasonable, before applying a 2.0 multiplier: \$950  
28

1 (attorney with 35 years of experience); \$870 (attorney with 28 years of experience); \$290 (paralegal).  
 2 Pearl Decl., ¶12(2);

3 *Ridgeway v. Wal-Mart Stores, Inc.*, No. C 08-05221 SI, 2014 WL 4477662 (N.D. Cal. Sept.  
 4 10, 2014), a wage and hour class action, in which the court issued a statutory fee award against Wal-  
 5 Mart based on the following 2017 rates (plus a 2.0 multiplier) to partially offset a 25% common fund  
 6 fee award payable by the class: \$830 (attorney with 34 years of experience); \$425 (attorney with 6  
 7 years of experience) and \$300 (attorney with one year of experience). Pearl Decl., ¶12(1);

8 *Armstrong v. Brown*, No. 04:94-cv-02307-CW (N.D. Cal. Dec. 19, 2017) (Dkt. No. 2708), a  
 9 suit involving accommodations for prisoners and paroles with disabilities in which the court approved  
 10 the following 2017 hourly rates for monitoring the injunction in that matter: \$950 (attorney with 37  
 11 years of experience); \$825 (attorney with 33 years of experience); and \$240-325 (paralegals). Pearl  
 12 Dec., ¶12(4).

13 The DFEH's loadstar is also consistent with awards in other contempt cases:

14 *Kelly w. Wengler*, 822 F.3d 1085 (9th Cir. 2016) (2014 award of \$322,420.39 in fees,  
 15 comprised of 844.8 hours for two attorneys at a rate of \$213/hour (the uppermost limit under the  
 16 PLRA) plus a 2.0 and 1.3 multiplier, and 174.1 hours for paralegals and law students at \$65/hour  
 17 [*affirming Kelly v. Wengler*, 7 F.Supp.3d 1069 (D. Idaho 2014)].)

18 *Bernardi v. Yuetter*, 951 F.2d 971 (9th Cir. 1991) (1991 award of \$225,531.60 in fees,  
 19 comprised of 700.98 hours for five attorneys and 441.43 hours for law clerks and paralegals with a  
 20 2.0 multiplier [*affirming in part and reversing in part Bernardi v. Yuetter*, 754 F.Supp. 743 (N.D.  
 21 Cal. 1990)].)

#### 22 4. The DFEH's Costs are Reasonable

23 DFEH is entitled to costs which total **\$4,077.54**. These represent travel costs for three  
 24 attorneys to Newtown, Pennsylvania and travel costs for the February 23, 2018 contempt hearing. To  
 25 save on expenses for the trip to Pennsylvania, DFEH attorneys took flights which required changing  
 26 planes, shared one of the hotel rooms, and took different itineraries in order to secure lower airfare.  
 27 Mayeda Decl., ¶¶10, 22. DFEH expended but is not seeking attorney Trasovan's travel costs for the  
 28

1 February 23, 2018 contempt hearing. DFEH expended but also is not seeking reimbursement for  
2 expert fees paid to Professor Blanck. Mayeda Decl., ¶22.

3 TOTAL FEES (\$529,341.00) PLUS COSTS (\$4,077.54) = **\$533,418.54**

4 **5. The DFEH is Entitled to Fees for Work on this Fee Petition**

5 DFEH is entitled to compensation for work performed on the fee motion; such “fees on fees”  
6 can be substantial. *Serrano v. Unruh*, 32 Cal.3d 621 (1982); *United States v. City & County of San*  
7 *Francisco*, 748 F.Supp. 1416, 1441 (N.D. Cal. 1990) (*aff’d in part and rev’d in part sub nom Davis*,  
8 976 F.2d 1536 (awarding plaintiffs’ attorneys almost 600 hours spent on the fee application at full  
9 market rates plus a 100 percent enhancement); *Greene v. Dillingham Construction, N.A., Inc.*, 101  
10 Cal.App.4th 418, 422 (2002) (\$102,201.50 for fees on fees in Fair Employment and Housing Act  
11 (FEHA) case); *Weeks v. Baker & McKenzie*, 63 Cal.App.4th 1128, 1169 (1998) (\$166,510.50  
12 awarded for fees in obtaining fee award in FEHA case); *Gates v. Rowland*, 39 F.3d 1439, 1448 (9th  
13 Cir. 1994) (\$177,603 for work on fee application); *Californians for Disability Rights v. California*  
14 *Dept. of Transportation*, No. C. 06-05125 SBA, 2010 WL 8746910 (N.D. Cal. Dec. 13, 2010) (over  
15 480 hours on fee motion reasonable); *Downey Cares v. Downey Community Development*  
16 *Commission*, 196 Cal.App.3d 983, 997 (1987) (awarding 1.5 multiplier on fee related work).

17 The request for fee-related services through July 6, 2018 after the exercise of billing judgment  
18 is 13.1 hours by Ms. Mayeda at \$850 per hour; 13.7 hours by Ms. Carrasco at \$425 per hour, and  
19 20.8 hours by Ms. Toyama at \$290 per hour. DFEH time records for work on the fee motion for  
20 which compensation is requested through July 6, 2018 are attached to the Mayeda declaration and  
21 will be supplemented in DFEH’s reply memorandum. Mayeda Decl., ¶27, Ex. I.

22 **IV. CONCLUSION**

23 DFEH’s attorneys successfully obtained a court order holding LSAC in civil contempt which  
24 extended the implementation of the Court’s orders and the Best Practices Panel Report on a  
25 nationwide basis for two years. Had DFEH not moved for contempt, the Consent Decree would have  
26 expired in May 2018. DFEH succeeded in the contempt proceeding in the face of a Monitor’s report  
27 asserting that LSAC had complied with the parties’ Consent Decree and the Best Practices. Prior to  
28 submitting the request, both of the undersigned counsel reviewed DFEH’s time records and

1 eliminated all time expended by five attorneys as well as over 830 hours expended by the four time  
2 keepers for whom reasonable fees are sought. Accordingly, DFEH respectfully requests that the  
3 Department, having obtained excellent results, be awarded its reasonable attorneys' fees and  
4 litigation costs as set forth herein, as well as those fees and costs incurred subsequently on this  
5 motion.

6 Dated: July 13, 2018

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

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8

\_\_\_\_\_  
/s/  
Mary Mayeda, Associate Chief Counsel

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\_\_\_\_\_  
/s/  
Joni Carrasco, Staff Counsel

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Attorneys for the Department

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