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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 THE GUIDIVILLE RANCHERIA OF
CALIFORNIA, a federally recognized Indian
19 Tribe; and UPSTREAM POINT MOLATE LLC,
20 a California Limited Liability Corporation,

21 Plaintiffs,

22 v.

23 THE UNITED STATES OF AMERICA;
SALLY JEWELL, the Secretary of the
Department of the Interior; KEVIN
24 WASHBURN, the Assistant Secretary - Indian
Affairs; and THE CITY OF RICHMOND, a
25 California Municipality,

26 Defendants.

27 *Caption continues next page*
28

Case No. CV 12-1326-YGR

**THE CITY OF RICHMOND'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES
AND COSTS**

Date: March 31, 2015
Time: 2:00 p.m.
Place: Ronald V. Dellums Federal
Building, 1301 Clay Street,
Oakland, CA

The Honorable Yvonne González
Rogers

1 THE CITY OF RICHMOND, a California
Municipality,

2 Counterclaimant,

3 v.

4 UPSTREAM POINT MOLATE LLC, a
5 California Limited Liability Corporation,

6 Counterclaim Defendant.

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INTRODUCTION

1
2 Plaintiffs brought this breach of contract action against the City seeking over *\$750 million*
3 *in damages*. Plaintiffs pursued an aggressive litigation strategy: serving the City with dozens of
4 discovery requests and forcing the City to sift through tens of thousands of documents. The City
5 tried to end this case three times by filing a motion for judgment on the pleadings. In response to
6 the first two motions, Plaintiffs sought leave to amend and continued to bombard the City with
7 discovery, all of which led the City to incur substantial fees. On December 12, 2013, this Court
8 granted the City's motion for judgment on the pleadings.

9 Undeterred, Plaintiffs filed a motion for leave to file a motion for reconsideration and a
10 motion for leave to file a fourth amended complaint. The Court denied those motions. Plaintiffs
11 then filed a motion to amend and certify orders for interlocutory review. That motion was also
12 denied. The Court entered judgment in favor of the City on February 3, 2015.

13 In compliance with Civil L.R. 54-5, the City's counsel met and conferred with counsel for
14 Plaintiffs to resolve the amount of attorneys' fees and costs that were owed to the City. Despite
15 there being no doubt that the City is entitled to fees and costs, those efforts failed.

16 By this motion, the City seeks a reasonable attorneys' fee award of \$2,149,370.00 and
17 costs in the \$156,259.26. Those amounts represent *0.003 percent* of the more than \$750 million
18 in damages sought by the Plaintiffs. As discussed more fully below, it was reasonable for the
19 City to pay its attorneys at Morrison & Foerster LLP roughly \$2 million dollars to successfully
20 defend high-stakes litigation such as this.

BACKGROUND

21
22 This Court provided a detailed summary of the facts related to Plaintiffs' failed breach of
23 contract claims in its Order Granting Motion of City of Richmond for Judgment on the Pleadings,
24 dated December 12, 2013. Because the Court is well aware of the facts of this case, and to avoid
25 unnecessary duplication, a detailed summary of the underlying facts is not repeated here. For the
26 Court's convenience, a copy of the Court's Order granting the City's motion for judgment on the
27 pleadings is attached as **Exhibit O** to the declaration of Christopher J. Carr filed in support of this
28

1 motion (Carr Decl.). A summary of the legal work performed and legal fees incurred by the City
2 in response to this lawsuit is set forth below. Civil L.R. 54-5(b)(2).

3 **Complaint.** The Third Amended Complaint is a 38-page document consisting of 149
4 numbered paragraphs and twelve causes of action, accompanied by 131 pages of exhibits. Dkt.
5 No. 91. Six causes of action were asserted against the City: Breach of Contract (Seventh Cause
6 of Action); Breach of Covenants of Good Faith and Fair Dealing (Eighth Cause of Action);
7 Unjust Enrichment (Ninth Cause of Action); Quantum Meruit (Tenth Cause of Action); Specific
8 Performance (Thirteenth Cause of Action); and Declaratory Relief (Fourteenth Cause of Action).
9 *Id.* ¶¶ 101-147. The allegations in the Complaint spanned many years and the claims involved
10 complex legal issues involving federal and state law, including the California Environmental
11 Quality Act—a notoriously complex environmental statute. Plaintiffs sought over \$750 million
12 from the City. *Id.* ¶ 76.

13 **Motion Practice.** Untangling Plaintiffs’ many claims and various theories was no easy
14 task. The City’s attorneys at Morrison & Foerster spent considerable time researching the merits
15 (or lack thereof) of Plaintiffs’ claims, and ultimately decided that filing a motion for judgment on
16 the pleadings was the best and most efficient way to end this case. Carr Decl. ¶ 28. As noted
17 above, Plaintiffs repeatedly sought leave to amend their complaint and the City had to prepare
18 three motions for judgment on the pleadings before its motion was finally heard. Dkt. Nos. 38,
19 55, 113 & 212. Plaintiffs, by design, employed a “moving target” strategy to drive up the costs of
20 litigation and to harass the City by firing discovery request after discovery request at the City.
21 The City also had to spend public resources opposing more motions filed by Plaintiffs: (a) a
22 motion for leave to file a motion for reconsideration; (b) a motion for leave to file a fourth
23 amended complaint; and (c) a motion to amend and certify orders for interlocutory appeal. Dkt.
24 Nos. 219, 221 & 237. Opposing those motions—all of which were denied—took considerable
25 time and effort, as shown by the briefing submitted by the City. Dkt. Nos. 228, 239.

26 **Discovery.** Plaintiffs served hundreds of discovery requests on the City and the City had
27 to spend enormous resources responding to that discovery. Carr Decl. ¶ 36. Due to the scope of
28 those requests, the City, between August 2012 and October 2012, collected over 500 GB of

1 electronic documents from over 30 custodians and also pulled nearly 6000 hard copy documents
2 totaling over 50,000 pages from 12 custodians. *Id.* The City then uploaded over 600,000
3 electronic and hard copy documents into a review database and ran a long list of search terms,
4 provided by Plaintiffs, on those documents. *Id.* After reviewing the many documents, the City
5 produced over 40,000 pages of documents, bates-stamped in chronological order and ready for
6 Plaintiffs' review. *Id.* That the City spent considerable time and effort in reviewing and
7 producing documents is further illustrated by the fact the City has and is paying about \$2500 per
8 month to a discovery vendor simply to maintain the documents collected in response to Plaintiffs'
9 discovery requests, regardless of whether any searches are run on the documents. *Id.* ¶ 26.

10 The City's discovery, by comparison, was much more limited and focused. *Id.* ¶ 37.
11 However, Plaintiffs literally "dumped" over 85,000 pages of documents in response to the City's
12 discovery requests, failing to bates-stamp all of the documents. *Id.* That failure effectively made
13 it impossible to review those documents in an efficient way. *Id.*

14 The City also had to spend considerable time and effort in resolving discovery issues with
15 the Plaintiffs. *Id.* ¶ 38. The parties exchanged meet-and-confer letters, had face-to-face meetings,
16 and appeared before a Magistrate Judge for discovery conferences, including litigating an
17 important attorney-client privilege issue concerning the implications of disclosures by individual
18 city council members. *Id.* ¶ 38; Dkt. Nos. 164, 167, 187, 190.

19 In addition to the above, the City's attorneys performed other tasks: research legal issues,
20 draft memoranda, attend meetings and hearings, develop strategy, meet with our client, meet and
21 confer with opposing counsel, exchange e-mail correspondence with opposing counsel, and the
22 myriad other tasks that come with modern law practice. Carr Decl. ¶ 39. The invoices sent by
23 Morrison & Foerester to the City set forth in detail all of the legal work performed in connection
24 with this litigation but are not attached to this motion, in part, out of concern that the time entries
25 could reveal attorney-client confidences.¹ *Id.* ¶ 18. However, if the Court wishes to review those

26 ¹ *Frank Music Corp. v. Metro-Goldwyn-Mayer Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989)
27 (contemporaneous time records are not necessary if fee request supported by other evidence, such
28 as testimony).

1 time entries, the City will provide those invoices to the Court for its in camera review, as
 2 provided by Civil L.R. 54-5(b)(2). That said, the City submits that the evidence before the Court,
 3 coupled with the Court's familiarity with this litigation, is more than sufficient to rule on the
 4 City's fee motion.

5 For the Court's convenience, a table of timekeepers who worked on this matter, the
 6 number of hours they worked, the value of their legal services and a brief description of the tasks
 7 they performed is set forth below.² A detailed description of each timekeeper's relevant
 8 qualifications and experience and hourly rates is found in the Declaration of Christopher J. Carr
 9 filed in support of this motion. Carr Decl. ¶¶ 18-21.

ATTORNEY	HOURS	VALUE	DESCRIPTION OF WORK
Arturo Gonzalez	121.50	\$ 69,445.00	Lead trial counsel
Chris Carr	744.25	\$ 419,892.50	Day-to-day partner on case
Shaye Diveley	694.50	\$ 391,525.00	Manage and supervise all aspects of discovery; draft briefs,
Travis Brandon	536.00	\$ 295,737.50	Research legal issues, draft briefs
Alejandro Bras	58.50	\$ 32,175.00	Research legal issues
Navi Dhillon	75.75	\$ 45,071.25	Research legal issues, draft briefs
Dan Gershwin	87.25	\$ 50,558.75	Research legal issues, draft briefs
Ian Andrew Johnston	72.25	\$ 41,543.75	Research legal issues, draft briefs
Sue Landsittel	562.00	\$ 317,768.75	Research legal issues, draft briefs
Mary (Natalie) Naugle	46.25	\$ 26,593.75	Expert work and respond to discovery
Andrea McAfee	1,302.25	\$ 409,418.75	Respond to discovery
Bethany DeRuitter	184.00	\$ 53,665.00	E-discovery manager
TOTALS	4,484.50	\$ 2,153,395.00	
CLIENT ACCOMMODATION DEDUCTION		\$ (4,025.00)	
FEE TOTAL		\$ 2,149,370.00	

26 _____
 27 ² Reflecting the City's conservative approach in this application, timekeepers who billed 15 hours
 28 or less on this litigation are not included in the table and the fees they incurred are not sought.

1 **ARGUMENT**

2 There are only two questions before the Court:

3 (1) Is the City entitled to attorneys' fees and costs as the prevailing party?

4 (2) Are the attorneys' fees and costs sought by the City reasonable?

5 As shown below, the answer to each question is *yes*.

6 **A. The City Is Entitled to Collect Attorneys' Fees and Costs As the Prevailing**
7 **Party.**

8 The City's claim of attorneys' fees is based on the contract that Plaintiffs alleged in their
9 Complaint entitled them to attorneys' fees and costs from the City—the Land Disposition
10 Agreement (LDA) underlying this dispute. TAC ¶ 105; Dkt. No. 91. Section 8.6 of the LDA
11 expressly provides that this "Agreement shall be interpreted under and pursuant to the laws of the
12 State of California." Carr Decl., Ex. K at 19. Under California law, "where the parties have
13 contractually obligated themselves to pay attorneys' fees," California Civil Code section 1717
14 governs. *Farmers Ins. Exchange v. Law Offices of Conrado Joe Sayas, Jr.*, 250 F.3d 1234, 1237
15 (9th Cir. 2001) (citations omitted). Section 1717 provides in relevant part:

16 In any action on a contract, where the contract specifically provides that attorney's
17 fees and costs, which are incurred to enforce that contract, shall be awarded either
18 to one of the parties or to the prevailing party, then the party who is determined to
19 be the party prevailing on the contract, whether he or she is the party specified in
20 the contract or not, shall be entitled to reasonable attorney's fees in addition to
21 other costs.

22 Cal. Civ. Code § 1717(a).

23 Section 8.8(a) of the LDA contains an attorneys' fees and costs provision. That section
24 provides in relevant part:

25 (a) In the event any legal action is commenced to interpret or to enforce the terms of
26 this Agreement or to collect damages as a result of any breach thereof, the party
27 prevailing in any such action shall be entitled to recover against the party not
28 prevailing all reasonable costs and expenses incurred in such action, including
reasonable attorney fees and costs of any appeals.

Carr Decl., Ex K at 19.

Section 8.8(a) is broadly worded and makes crystal clear that in the event any legal action
is commenced to enforce the LDA the prevailing party (here, the City) shall be entitled to recover

1 all reasonable costs and expenses, including attorneys' fees, from the parties not prevailing (here,
2 Plaintiffs).

3 The conclusion that the City is entitled to collect attorneys' fees and costs from Plaintiffs
4 is fortified by the allegations in Plaintiffs' Third Amended Complaint. For example, citing
5 Section 8.8(a) of the LDA, both Plaintiffs allege, at paragraph 105 of the Third Amended
6 Complaint, that the City would be obligated to pay attorneys' fees and costs to the Plaintiffs as a
7 result of the City's alleged breach of the LDA. Dkt. No. 91. The Judgment entered in favor of
8 the City establishes that there was no breach. It states that "Plaintiffs shall take nothing from the
9 City on the claims set forth in their Third Amended Complaint." Carr Decl., Ex. P. The City is
10 the "prevailing party" under any definition of that term. As provided by Section 8.8(a) of the
11 LDA, Plaintiffs are now obligated to pay the reasonable attorneys' fees and costs the City has
12 incurred.

13 **B. The Requested Fee Award Is Reasonable.**

14 As noted above, the City's motion for attorneys' fees and costs is based on the LDA and
15 that contract is governed by California law, which means California law governs this motion. *See*
16 *Shakey's Inc. v. Covalt*, 704 F.2d 426, 435 (9th Cir. 1983). "Under California law, the general
17 rule is that the amount of an attorneys' fee award is within the sound discretion of the trial court in
18 the absence of a patent abuse of that discretion." *Hancock Labs., Inc. v. Admiral Ins. Co.*, 777
19 F.2d 520, 526 (9th Cir. 1985) (citations omitted). Although a trial court may rely upon its own
20 knowledge and experience to ascertain what is a reasonable fee (*Scott, Blake & Wynne v. Summit*
21 *Ridge Estates, Inc.*, 251 Cal. App. 2d 347, 358 (1967)), California law requires the court to use
22 the touchstone or lodestar adjustment method of calculating the amount of an award. *Flannery v.*
23 *Cal. Highway Patrol*, 61 Cal. App. 4th 629, 639 (1998). The ultimate goal of the lodestar method
24 is to determine a reasonable fee amount. *See Chavez v. City of Los Angeles*, 47 Cal. 4th 970, 985
25 (2010).

26 The lodestar figure is calculated by taking the number of hours reasonably expended on
27 the litigation and multiplying it by a reasonable hourly rate. *Fischer v. SJB-P.D. Inc.*, 214 F.3d
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1 1115, 1119 (9th Cir. 2000). The court may consider a variety of factors in assessing whether the
2 number of hours expended and hourly rates charged are reasonable. Those factors include:

- 3 • The nature of the litigation and its difficulty;
- 4 • The amount of money involved in the litigation;
- 5 • The skill required and employed in handling the litigation;
- 6 • The attention given to the case;
- 7 • The attorney's success, learning, age and experience in the particular type
of work demanded;
- 8 • The intricacy and importance of the litigation;
- The labor and necessity for skilled legal training and ability in trying the
case; and
- The amount of time spent on the case.

9 *PLCM Grp. v. Drexler*, 22 Cal. 4th 1084, 1096 (2000); *Nieder v. Ferreira*, 189 Cal. App. 3d
10 1485, 1507 (1987). Further, in calculating the lodestar figure, a court may consider counsel's fee
11 arrangement with her client as some evidence of the value of the services being rendered. *Vella v.*
12 *Hudgins*, 151 Cal. App. 3d 515, 521 (1984). In addition, the amount of damages recovered—or
13 avoided—is an important factor in determining a reasonable fee. *Premier Med. Mgmt. Sys., Inc.*
14 *v. Cal. Ins. Guaranty Ass'n*, 163 Cal. App. 4th 550, 556 (2008).

15 The reasonableness of an hourly rate is to be determined by looking to “the rate prevailing
16 in the community for similar work performed by attorneys of comparable skill, experience, and
17 reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986) reh'g
18 denied, amended on other grounds, 808 F.2d 1373 (9th Cir. 1987). A party seeking attorneys'
19 fees bears the burden of demonstrating that the rates requested are “in line with the prevailing
20 market rate of the relevant community.” *Carson v. Billings Police Dep't*, 470 F.3d 889, 891 (9th
21 Cir. 2006) (internal quotations omitted). Generally speaking, “the relevant community is the
22 forum in which the district court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th
23 Cir. 2008) (citations omitted). Typically, “[a]ffidavits of the [defendant's] attorney and other
24 attorneys regarding the prevailing fees in the community and rate determinations in other cases ...
25 are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps*
26 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

1 With respect to the reasonableness of hours expended, the fee applicant bears the burden
2 of documenting the appropriate hours expended in the litigation and must submit evidence in
3 support of those hours worked. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The
4 reasonableness of the hours spent is to be assessed in light of the entire course of the litigation,
5 including pretrial matters, discovery and litigation tactics. *See Vo v. Las Virgenes Mun. Util.*
6 *Dist.*, 79 Cal. App. 4th 440, 447 (2000). Absent circumstances rendering the award unjust, an
7 attorneys' fee award should ordinarily include compensation for all hours reasonably spent by
8 counsel, including those relating solely to the fee. *Ketchum v. Moses*, 24 Cal.4th 1122, 1133
9 (2001). There is a presumption that the reported hours supported by counsel's verification are
10 credible and reasonable. *See Horsford v. Bd. of Trustees of Cal. State Univ.*, 132 Cal. App. 4th
11 359, 396-397 (2005).

12 In addition to an award of the fees and cost incurred in litigating the matter, the prevailing
13 party is also entitled to collect "fees on fees," that is, a party may seek the attorneys' fees and
14 costs it incurred in preparing for and litigating a fee award. *See e.g., Clark v. City of Los Angeles*,
15 803 F.2d 987, 992 (9th Cir. 1986); *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-60 (9th Cir.
16 1985).

17 The party opposing a fee motion bears a burden of rebuttal which requires submitting
18 evidence challenging the accuracy and reasonableness of the hours charged or the facts asserted
19 by the prevailing party. *Gates v. Rowland*, 39 F.3d 1439, 1449 (9th Cir. 1994). Generalized
20 "arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." *Premier*
21 *Med. Mgmt. Sys.* 163 Cal. App. 4th at 564. Rather, it is the burden of the challenging party to
22 point to specific evidence that the hours spent by opposing counsel are duplicative or excessive.
23 *See Gates*, 39 F.3d at 1449 (fee opponents failed to meet burden of rebuttal, because they failed to
24 point out with specificity any charges that were excessive or duplicative).

25 Judged against that legal background, the City submits that its attorneys' fee request is
26 reasonable, as explained below.

1 **1. Morrison & Foerster’s Hourly Rates Are Reasonable.**

2 The customary hourly rates for attorneys’ working at Morrison & Foerster’s San
3 Francisco office range from \$350.00 per hour for associates to more than \$1,000.00 per hour for
4 partners. Carr Decl. ¶ 19. Morrison & Foerster entered into a special fee arrangement with the
5 City because it is a public entity. *Id.* ¶ 20. Pursuant to that fee arrangement, the City agreed to
6 pay Morrison & Foerster a blended rate for all attorney time. *Id.* The blended rate paid by the
7 City has ranged from \$550.00 to \$595.00 per hour (Blended Rate).³ *Id.*

8 The City has submitted the declaration of Mr. Sanford Jay Rosen, Esq., to support its
9 motion (Rosen Decl.). Mr. Rosen is an expert on attorneys’ fee matters and has provided expert
10 testimony on the subject in various courts and proceedings, including a bench trial in a United
11 States District Court. Rosen Decl. ¶¶ 12-18. It is Mr. Rosen’s expert opinion, based on his
12 review of the file in this case and background, that Morrison & Foerster’s “rates are reasonable
13 and appropriate” and that Morrison & Foerster’s “rack rates are well within the range of the rates
14 within the Bay Area market for comparable attorneys and paralegals in comparable cases, as are
15 their blended rates.” Rosen Decl. ¶ 22. Mr. Rosen also declares that the “background,
16 experience, skills, and reputations of the Morrison & Foerster attorneys and other time keepers
17 are at the top of the profession.” Rosen Decl. ¶ 20.

18 That the Blended Rate is reasonable is further supported by the fact that the City received
19 a substantial discount from Morrison & Foerster’s typical fees. By agreeing to a Blended Rate,
20 Morrison & Foerster’s provided the City with an effective discount of ten percent (10%), saving
21 the City over \$225,750.00. Rosen Decl. ¶ 24.

22 Lastly, the Blended Rate falls within the range of similar requests for attorneys’ fees
23 approved here in the Northern District of California. The following cases make the point:
24 *Gutowski v. McKesson Corp.*, No. C 12-6056 CW, 2013 WL 3242265, at *2–3 (N.D. Cal. June
25 25, 2013) (approving rate of **\$584**; noting that according to a 2012 survey, “the average hourly
26

27 ³ The Blended Rate increased over time to account for Morrison & Foerster’s yearly and
28 customary rate increases. Carr Decl. ¶ 20.

1 billing rate for attorneys practicing in San Francisco was **\$622** and the average billing rate for
2 partners with twenty years of experience was **\$602**” (emphasis added)); *Minor v. Christie's, Inc.*,
3 Nos. C 08-05445 WHA & C 09-00471 WHA, 2011 WL 902235, at *7 (N.D.Cal. Jan. 28, 2011)
4 (approving rates of **\$600–\$700** for partners in breach of contract action); *Santa Fe Pointe, L.P. v.*
5 *Greystone Servicing Corp.*, No. C-07-5454 MMC, 2009 WL 3353449, at *2–3 (N.D.Cal. Oct. 16,
6 2009) (approving rate of **\$675** for partner in Jones Day's Los Angeles office with 20 years'
7 experience; noting that a 2009 summary of hourly rates at nine California firms indicates that an
8 attorney with 22 years' experience bills at an hourly rate of **\$650**).

9 Simply put, Morrison & Foerster’s Blended Rate is reasonable.

10 **2. Morrison & Foerster’s Total Number of Hours Spent Is Reasonable.**

11 In mounting a successful defense of the City, Morrison & Foerster spent 4,484.50 hours
12 litigating this case. Carr Decl. ¶ 21. The hours spent by Morrison & Foerster were reasonable
13 for several reasons.

14 As noted above, this was a complex case involving a claim of damages in excess of **\$750**
15 **million**. The underlying allegations spanned many years and involved a multi-phase casino
16 development project that implicated federal Indian law, state land use and planning laws, CEQA,
17 and more. This case also involves federal defendants, which further complicated matters.

18 Plaintiffs aggressively pursued this litigation, requiring Morrison & Foerster’s constant
19 attention and vigilance to control the litigation, including trying to limit its expenses and costs.
20 The experience and expertise marshalled to defend the City in this litigation was critical given the
21 specialized subject matter and high stakes involved.

22 Morrison & Foerster also staffed this case efficiently. For example, a substantial amount
23 of work involving discovery was performed by an experienced and senior paralegal whose hourly
24 rate is lower than the rate for associates. Partners and associates with specialized backgrounds in
25 environmental and land use law took the lead on legal issues in the case. That specialized
26 experience eliminated much of the “getting up to speed” time on the law and allowed attorneys to
27 work efficiently with the facts and allegations. Mr. Carr also closely monitored the monthly
28 invoices and is confident that the number of hours billed are commensurate with the tasks that

1 needed to be performed. Carr Decl. ¶¶ 16-17. The City, a public entity, also closely participated
 2 in and managed this litigation and was very sensitive to its costs. *Id.* ¶ 16. It bears noting that the
 3 City is not seeking an award for the fees and costs that that it incurred in-house, on its own
 4 lawyers—the City Attorney and Assistant City Attorney. *Id.* ¶ 24. The City’s own lawyers spent
 5 hundreds of hours over the several years working on matters relating directly to this litigation. *Id.*

6 The result of the litigation speaks for itself. Morrison & Foerster obtained a Judgment in
 7 favor of the City that provides Plaintiffs “shall take nothing from the City on the claims set forth
 8 in their Third Amended Complaint.” And that Judgment was secured at a cost of **0.003** percent of
 9 the potential amount at stake.

10 To eliminate disputes about the reasonableness of its hours, the City has voluntarily
 11 reduced the number of hours of attorney time it could otherwise seek. *Id.* ¶ 23. For example, this
 12 action was filed in March 2012. The City incurred about \$70,000 in fees between March and
 13 April 2012 relating to this matter. *Id.* Those fees are not being sought here. *Id.* Nor is the City
 14 seeking time for attorneys who billed 15 hours or less on the litigation, including certain partners
 15 who provided high-level strategic advice. *Id.*

16 In short, spending 4,484.50 hours to successfully defend a complex action involving a
 17 claim of damages approaching a billion dollars was reasonable.

18 **C. The City’s Costs Are Reasonable.**

19 The City hereby seeks an award of costs in the amount of \$156,259.26.⁴ The vast
 20 majority of those costs were incurred because of Plaintiffs’ aggressive and abusive discovery
 21 tactics. As previously discussed, Section 8.8(a) of the LDA expressly provides that the prevailing
 22 party shall be entitled to “all reasonable costs and expenses incurred.” Carr Decl., Ex K at 19.
 23 The City prevailed and the Plaintiffs lost and now should be ordered to pay the City its costs.⁵

24 _____
 25 ⁴ The specific costs being sought are identified at Ex. M of the Carr Declaration.

26 ⁵ Out of an abundance of caution, the City has also filed a separate Bill of Costs.
 27 However, the City believes it would be more efficient for the Court to award the City its costs in
 28 the context of this motion rather than requiring the parties to going through the motion to tax
 costs process.

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CONCLUSION

The City prevailed in this litigation and the Plaintiffs are now required by the LDA to pay the attorneys' fees and costs incurred by the City in defending itself in this litigation. For all the reasons set forth above, the City respectfully requests that the Court issue an order awarding \$2,149,370.00 in attorneys' fees and \$156,259.26 in costs in favor of the City and against the Plaintiffs. The City reserves the right to include additional fees and costs incurred in connection with finalizing this motion, preparing any reply, and appearing at a hearing on this motion.

Respectfully submitted,

Dated: February 17, 2015

MORRISON & FOERSTER LLP

By: /s/ Arturo J. González
Arturo J. González

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THE CITY OF RICHMOND