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The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

D.S.; D.Y. by and through his next friend
JULIE KELLOGG-MORTENSEN; H.A.
by and through his next friend KRISTEN
BISHOPP; and DISABILITY RIGHTS
WASHINGTON, a nonprofit membership
organization for the federally mandated
Protection and Advocacy Systems,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES; and ROSS
HUNTER, in his official capacity as
Secretary of the Washington State
Department of Children, Youth, and
Families,

Defendants.

NO. 2:21-cv-00113-BJR

PLAINTIFFS' UNOPPOSED
MOTION FOR ORDER
APPROVING ATTORNEYS'
FEES AND COSTS FOLLOWING
MEDIATION

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I. INTRODUCTION

Plaintiffs D.Y., D.S., and H.A., through their next friends, and acting on behalf of a class of children with behavioral health and developmental disabilities who are in the custody of Washington State’s child welfare system, and the non-profit organization Disability Rights Washington (“Plaintiffs”), respectfully request the Court’s approval of their agreed-upon attorneys’ fees and costs for the work Plaintiffs’ Counsel conducted in order to reach the comprehensive Settlement Agreement pending before this Court for final approval.

Plaintiffs filed this case after extended investigations and pre-litigation negotiations, alleging a myriad of systemic failures that were resulting in compounding and likely irreparable harm to foster children with intense and complicated needs. Plaintiffs’ Counsel investigated, litigated, and negotiated to reach an outstanding result on the behalf of the class. The hours and costs expended were necessary to pursue remedies for the complex problems this lawsuit has ambitiously sought to address. This Court should approve Plaintiffs’ Counsel’s agreed-upon attorney fees and costs, which are reasonable in light of fair market rates and hours Counsel spent pursuing the final outcome that Plaintiffs achieved, and were agreed to through good faith mediations between the parties.

II. FACTUAL BACKGROUND

A. Overview of the Litigation

On January 28, 2021, Plaintiffs brought this suit against the Washington State Department of Children, Youth, and Families (“DCYF”) and its Secretary (“Defendants”). Compl. ¶ 1, ECF No. 1. The complaint alleges that Defendants have failed to correct systemic deficiencies in Washington State’s child welfare system and failed to maintain a system that ensures children with disabilities in the child welfare system receive the necessary services and supports to allow them to return promptly and safely to their own families and communities. Compl. ¶ 5, ECF No. 1. The complaint alleges that these systemic failures have grave costs to

1 children’s health and well-being, and that Defendants’ failures violate the rights of foster
 2 children with disabilities under United States Constitution, Title II of the Americans with
 3 Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act of
 4 1973 (“Rehabilitation Act”), 29 U.S.C. § 794, and the Adoption Assistance and Child Welfare
 5 Act of 1980 (“AACWA”), 42 U.S.C. §§ 621 *et seq.*, 670 *et seq.* Compl. ¶¶ 7-9, ECF No. 1.
 6 To address these issues, Plaintiffs sought declaratory and injunctive relief. Compl. ¶¶ 107-29,
 7 ECF No. 1. In their Answer, Defendants denied liability for Plaintiffs’ claims. Answer
 8 ¶¶ 107-29, ECF No. 23.

9 Prior to filing the lawsuit, Plaintiffs’ counsel undertook an extensive investigation,
 10 including meeting in-person with foster youth placed out-of-state in highly restrictive
 11 congregate settings, preparing a report raising concerns about the treatment of youth placed in
 12 out-of-state facilities, speaking with foster youth and other stakeholders across the state to
 13 understand the challenges faced by youth and families in the system, analyzing case files and
 14 other records, and conducting legal research and factual analysis regarding the range of legal
 15 violations at issue. Kas Decl. in Support of Unopposed Mot. for Attorneys’ Fees and Costs
 16 (“Kas Decl.”) ¶¶ 9-11. Plaintiffs’ counsel contacted Defendants, seeking to address the issues
 17 discussed above without engaging in a lawsuit. *Id.* ¶ 11. The parties engaged in structured
 18 negotiations from approximately September 2019 through September 2020. Kas Decl. in
 19 Support of Joint Motion for Prelim. Approval (“Kas Prelim. Approval Decl.”) ¶ 4, EFC No. 93.
 20 However, when negotiations failed to resolve these issues, Plaintiffs filed their complaint. Kas
 21 Decl. ¶¶ 12.

22 On June 29, 2021, the Court granted in part Plaintiffs’ motion for a preliminary
 23 injunction, directing Defendants to change practices relating to children in “placement
 24 exceptions” using a hotel and/or government office. Order Granting in Part Mot. for Prelim.
 25 Inj., ECF No. 63. Plaintiffs’ Counsel mediated with Defendants to stipulate to a class
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1 definition, which was certified on September 22, 2021, to include individuals who are or in the
 2 future will be (a) under the age of 18, (b) in DCYF's placement during a dependency
 3 proceeding, and (c) have experienced five or more placements, excluding temporary
 4 placements, or have been referred for or are in out-of-state group care placement, or have
 5 experienced a hotel or office stay in the past six months, or are awaiting a Children's Long-
 6 Term Inpatient Program (CLIP) bed.¹ Stip. and Order Regarding Definition of Class Action
 7 and Amend. Scheduling Order 4, ECF No. 77.

8 Since the lawsuit was filed, the parties have engaged cooperatively in extensive
 9 discovery efforts. Plaintiffs have propounded multiple sets of document requests and
 10 interrogatories, negotiated search terms for electronically stored information for one set of
 11 documents, and initiated negotiations regarding search terms for other documents. Welch
 12 Decl. ¶ 13. Defendants have produced more than 190,000 pages of documents, of which
 13 Plaintiffs have reviewed a significant portion along with the full case files for each named
 14 Plaintiff. Welch Decl. ¶ 13; Juneja Decl. ¶ 19. Plaintiffs have also taken two depositions of
 15 DCYF employees. Welch Decl. ¶ 13. These discovery efforts required a substantial
 16 investment of time for Plaintiffs to carry out, and were crucial for gathering evidence to
 17 support their claims as well as to inform Plaintiffs' participation in the settlement negotiations
 18 that were simultaneously taking place.

19 **B. Settlement Negotiations and Final Agreement**

20 The settlement is the result of several mediation sessions spanning a year's time. After
 21 Plaintiffs filed this litigation, the parties restarted settlement mediations on June 15, 2021, with
 22 the assistance of a skilled mediator and subject matter expert, Kathleen Noonan. Kas Prelim.
 23 Approval Decl. ¶ 6. The parties met virtually for mediations over more than a dozen sessions
 24 between June 15, 2021, and June 2, 2022, and met in person for a full-day mediation session
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26 ¹ The parties agreed to the above definition instead of the class definition included in the Complaint. *See*
 ECF No. 77.

1 on April 21, 2022. Kas Prelim. Approval Decl. ¶ 8. Between sessions, the parties
 2 continuously exchanged numerous written proposals and settlement drafts, even while
 3 engaging in discovery. *Id.* These efforts resulted in the Settlement Agreement, ECF No. 94-1,
 4 which was executed on June 6, 2022, and which is presently before the Court for approval. As
 5 discussed in detail in pages 5 through 7 of the Parties’ Joint Motion for Preliminary Approval,
 6 ECF No. 92, the terms of the Agreement provide for a comprehensive array of remedies to
 7 expand placement options and improve practices to address the complex and intersectional
 8 needs of foster children with disabilities and their families.

9 **C. Attorneys’ Fees, Costs, and Expenses**

10 The Settlement Agreement itself affirms “an agreement that attorneys’ fees, costs, and
 11 expenses shall be paid to Plaintiffs’ Counsel for the litigation, mediation, and post-settlement
 12 monitoring through the date Defendants’ obligations under this Agreement terminate.” ECF
 13 No. 94-1, at ¶ 56. The Parties did not agree upon the amount of attorney’s fees and costs in the
 14 Settlement Agreement, which instead provided that they would “make good faith efforts to
 15 negotiate the amount of attorneys’ fees, costs, and litigation expenses to be awarded to
 16 Plaintiffs’ Counsel,” and that if such efforts were unsuccessful, Plaintiffs’ Counsel could file a
 17 motion for fees and costs with the District Court. ECF No. 94-1, at ¶ 55.

18 The Parties did not discuss attorneys’ fees and costs until after they had reached
 19 resolution on all other terms of the Settlement Agreement. Kas Decl. ¶ 14. Mediation
 20 regarding attorneys’ fees and costs was conducted by Ms. Noonan. *Id.* After the Settlement
 21 Agreement was fully executed and submitted to the Court for preliminary approval, the Parties
 22 successfully mediated an agreement regarding the amount of attorneys’ fees and costs. *Id.*
 23 Plaintiffs’ Counsel agreed to accept \$2,150,000 as a compromise for their efforts expended
 24 through the date of the final approval hearing, even though their originally proposed actual
 25 lodestar on this matter to date is higher. *Id.* Plaintiffs’ Counsel represents their lodestar, at the
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1 prevailing market rate for an overall group of attorneys of similar skill, experience, and
 2 reputation conducting similar work multiplied by the reasonable time they have expended on
 3 this case,² is approximately \$2,601,434.30 as of July 20, 2022, and their expenses are
 4 \$19,258.27 as of that date; the tables below summarize the hours worked by each timekeeper
 5 and expenses incurred by each firm. Carney Decl. Ex. B; Juneja Decl. Ex. B, C; Kas Decl. Ex.
 6 B, C; Lin Decl. Ex. D, E; Welch Decl. Ex. B, C. Thus, the requested amount of \$2,150,000
 7 represents a reduction of at least 18.0% from the proposed lodestar.
 8

9 Plaintiffs represent their proposed lodestar amount excludes time that Plaintiffs'
 10 Counsel deleted in an exercise of billing judgment to account for excess, redundant, or
 11 unreasonably duplicative time. Carney Decl. ¶ 14; Juneja Decl. ¶ 34; Kas Decl. ¶ 22; Lin Decl.
 12 ¶ 14; Welch Decl. ¶¶ 19, 21. Plaintiffs' Counsel also represent they have excluded additional
 13 time that was necessary but may have had only incidental benefits to the Class. For example,
 14 Plaintiffs' Counsel excluded billable time for work spent by attorneys and paralegals new to
 15 the case and by law clerk interns, including those who performed substantial document review
 16 that would have otherwise been completed by an attorney on the case. Juneja Decl. ¶ 34;
 17 Welch Decl. ¶¶ 19, 21. Plaintiffs' Counsel also fully excluded time for a number of attorney
 18 and non-attorney timekeepers who were not central to the case. Juneja Decl. ¶ 34; Kas Decl. ¶
 19 22; Welch Decl. ¶ 19. Furthermore, Plaintiffs' Counsel excluded an extensive amount of time
 20 spent conducting on-site monitoring, investigating, and conducting research regarding out-of-
 21 state placements in Iowa and Utah, despite being essential to the parties' 2019-2020 structured
 22 negotiations and subsequent 2021-2022 mediation. Kas Decl. ¶ 22. Thus, Plaintiffs'
 23 Counsel's requested amount actually represents a greater reduction from the time they in fact

24 ² For purposes of calculating this lodestar, Plaintiffs' counsel assumed an averaged attorney billing rate
 25 formula for reasonable hourly rates for the local market or the type of work performed, which is a formula that
 26 Disability Rights Washington routinely uses to set its rates. The formula utilized is as follows: a base rate of \$325
 per hour, increased by \$15 per hour for each year the attorney has been practicing law since that attorney
 graduated from law school. Kas Decl. ¶ 24; *see also* Juneja Decl. ¶ 39, Ex. G (table showing calculation). This
 formula does not reflect the higher market rates for out-of-state counsel.

devoted to prosecuting this action than the 18.0% percent described above.

	Time	Grad. Year
National Center for Youth Law		
Anna Belkin	391.1	2020
Em Holcomb	292.8	2021
Freya Pitts	413.4	2013
Jean Strout	411.9	2014
Josh Nomkin	178.5	2021
Leecia Welch	251.0	1996
Poonam Juneja	414.8	2009
Soraya Morales Nuñez	178.9	Paralegal
Carney Gillespie PLLP		
Christopher Carney	273.9	2000
Disability Rights Washington		
Susan Kas	1,367.0	2005
Children's Rights		
Leecia Welch	452.180	1996
Stephanie Persson	148.570	2015
Isabel Boyer	11.665	Paralegal
Munger, Tolles & Olson LLP		
Elizabeth S. P. Douglas		2017
Alex Gorin		2017
Bowe Kurowski		ALS
Laura K. Lin		2009

Expenses	Amount
National Center for Youth Law	\$ 3,568.11
Carney Gillespie PLLP	N/A
Disability Rights Washington	\$ 5,024.35
Children's Rights	\$ 1,008.39
Munger, Tolles, & Olson LLP	\$ 9,657.42
TOTAL EXPENSES	\$ 19,258.27

Each firm's contemporaneous billing and expense records through July 20, 2022, are

1 provided with the declarations filed with this motion, and are summarized in the charts above.
 2 Carney Decl. Ex. B; Juneja Decl. Ex. B, C; Kas Decl. Ex. B, C; Lin Decl. Ex. D, E; Welch
 3 Decl. Ex. B, C. The amount of time and costs that Class Counsel will continue to incur until
 4 final approval of the Settlement Agreement, including responding to the inquiries and
 5 comments of Class Members and other stakeholders, preparing a filing to respond to any
 6 objections and comments, and traveling to and participating in the final approval hearing on
 7 September 7, 2022, will not be separately compensated.³ Kas Decl. ¶¶ 14, 23. Those amounts
 8 are also included in the \$2,150,000 compromise.

9 II. ARGUMENT

10 A. Plaintiffs Are Prevailing Parties.

11 Under 42 U.S.C. § 1988, “a prevailing plaintiff should ordinarily recover an attorney’s
 12 fee unless special circumstances would render such an award unjust.” *Hensley v. Eckerhart*,
 13 461 U.S. 424, 429 (1983) (internal quotation marks and citations omitted). A “reasonable” fee
 14 is one “that is sufficient to induce a capable attorney to undertake the representation of a
 15 meritorious civil rights case.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010).

16 “When a plaintiff succeeds in remedying a civil rights violation he serves as a private
 17 attorney general, vindicating a policy that Congress considered of the highest priority.” *Fox v.*
 18 *Vice*, 563 U.S. 826, 833 (2011) (quoting *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S.
 19 400, 402 (1968)) (internal quotation marks omitted). Congress enacted § 1988’s fee shifting
 20 remedy because it was concerned with ensuring that “those who violate the Nation[]’s
 21 fundamental laws are not to proceed with impunity,” and so that “our civil rights laws” would
 22 not “become mere hollow pronouncements which the average citizen cannot enforce.” S. Rep.
 23 No. 94-1011, at 2, 6 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5908, 5910, 5913. “The
 24

25 ³ The Settlement Agreement provides that Plaintiffs’ Counsel are entitled to “attorneys’ fees, costs, and
 26 expenses . . . for . . . post-settlement monitoring . . .” ECF No. 94-1, at ¶ 56. Plaintiffs do not waive their
 entitlement to such fees, costs, and expenses, and reserve the right to seek fees for work performed after final
 approval of the Settlement Agreement.

1 purpose of § 1988 is to ensure effective access to the judicial process for persons with civil
2 rights grievances.” *Hensley*, 461 U.S. at 429 (internal quotation marks and citations omitted).

3 Here, the Parties agree that Plaintiffs are the prevailing party and entitled to recover
4 mediated fees and costs. ECF No. 94-1, at ¶ 56. Indeed, Plaintiffs have achieved significant
5 relief in the Settlement Agreement, ECF No. 94-1, as described above. Further, there are no
6 circumstances that would render an award of attorneys’ fees and costs unjust. To the contrary,
7 Plaintiffs vindicated the civil rights of a class of vulnerable foster children, who could not have
8 brought this case on their own behalf. Plaintiffs should be awarded their mediated attorneys’
9 fees and expenses.

10 **B. Plaintiffs Should Recover Their Fees Mediated With Defendants, Which Reflect a**
11 **Reduction From the Attorneys’ Lodestar.**

12 In determining reasonable attorneys’ fees, the first step is to calculate the lodestar by
13 multiplying the number of hours reasonably expended by the reasonable hourly rate. *Hensley*,
14 461 U.S. at 433. The lodestar is “presumed to be the reasonable fee” to which counsel is
15 entitled. *Blum v. Stenson*, 465 U.S. 886, 897 (1984); *see also Stanger v. China Elec. Motor,*
16 *Inc.*, 812 F.3d 734, 738 (9th Cir. 2016) (“there is a strong presumption that the lodestar
17 represents a reasonable fee”). “The lodestar method yields a fee that is presumptively
18 sufficient to achieve [the] objective” of “induc[ing] a capable attorney to undertake the
19 representation of a meritorious civil rights case.” *Perdue*, 559 U.S. at 552.

20 **1. Plaintiffs’ Counsel’s Claimed Hours Are Reasonable.**

21 The first part of the lodestar inquiry examines whether the hours Plaintiffs’ Counsel
22 expended were reasonable. Courts recognize that attorneys representing the prevailing party
23 should be compensated for “every item of service” that a reasonable lawyer would have
24 performed to protect the client’s interest. *Armstrong v. Davis*, 318 F.3d 965, 971 (9th Cir.
25 2003). The Ninth Circuit has directed that district courts generally “should defer to the
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1 winning lawyer’s professional judgment as to how much time he was required to spend on the
2 case.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). “Where a plaintiff
3 has obtained excellent results, his attorney should recover a fully compensatory fee. Normally
4 this will encompass all hours reasonably expended on the litigation.” *Hensley*, 461 U.S. at
5 435.

6 In this case, Plaintiffs have achieved “excellent results” supporting this Court’s
7 approval of the mediated fee amount. The Settlement Agreement provides a comprehensive
8 set of innovative reforms that are designed to address the various issues raised in Plaintiffs’
9 complaint in a way that benefits the children and families in the state’s child welfare system.
10 The hours that Plaintiffs’ Counsel expended were reasonably expended in obtaining this highly
11 successful outcome for the Class. As demonstrated in the declarations and hours logs
12 submitted with this motion, Plaintiffs’ Counsel spent time: (1) conducting a lengthy pre-filing
13 investigation, including meeting with foster youth and other stakeholders across the state of
14 Washington as well as placed out-of-state, and analyzing case files and other records;
15 (2) carrying out substantial pre-litigation negotiations seeking to avoid the need to file the
16 lawsuit; (3) preparing and filing a complex and detailed class action complaint when the
17 parties’ negotiations stalled; (4) engaging in extensive formal discovery efforts, including
18 propounding multiple documents requests and interrogatories, negotiating search terms for
19 electronically stored information, and taking two depositions of DCYF employees; (5)
20 carefully reviewing and analyzing a significant portion of the more than 190,000 pages of
21 documents produced by the Defendants as well as the complete case files for each of the
22 named Plaintiffs, in order to gather evidence to support the claims of the lawsuit and to inform
23 Plaintiffs’ participation in settlement negotiations, both to understand the likelihood of their
24 ultimate success on the merits and to ensure that they were negotiating for relief that would
25 benefit the Class; (6) successfully moving this Court for a preliminary injunction to address
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1 Class Members' allegations regarding use of offices, hotels, and cars, and negotiating interim
2 relief with the Defendants; (7) mediating with the Defendants to stipulate to certification of the
3 Class; (8) consulting and working with local and national experts to inform proposed remedies
4 for the claims asserted in the Complaint; (9) participating in the mediation and settlement of
5 Plaintiffs' claims on a Class-wide basis; and (10) drafting the settlement agreement, and
6 motions for settlement approval and approval of mediated attorneys' fees and costs. Carney
7 Decl. ¶¶ 8-12; Juneja Decl. ¶¶ 16-22; Kas Decl. ¶¶ 9-14; Lin Decl. ¶¶ 9-11; Welch Decl. ¶¶ 11-
8 14. Plaintiffs' Counsel will continue to spend time prior to the final approval of the Settlement
9 Agreement performing work to obtain such approval. All of this time is compensable. *See,*
10 *e.g., Hensley*, 461 U.S. at 435 (counsel is entitled to fees for "all hours reasonably expended on
11 the litigation").

12 Plaintiffs have agreed to seek no more than \$2.15 million in attorneys' fees, expenses,
13 and costs, which represents a reduction of approximately \$470,693, or at least 18% percent, of
14 their lodestar and expenses. Furthermore, this percentage reduction does not reflect other
15 substantial reductions that Plaintiffs made to their lodestar, including omitting a number of
16 attorney and non-attorney timekeepers and declining to bill for time spent conducting on-site
17 monitoring, investigating, and research regarding out-of-state placements of Washington youth
18 in Iowa and Utah. Juneja Decl. ¶ 34; Kas Decl. ¶ 22; Welch Decl. ¶¶ 19, 21.

19 The mediated amount is supported by Plaintiffs' representations regarding efficiency.
20 These reductions more than account for any duplication in work. Plaintiffs' Counsel had an
21 obligation to advance the case as quickly and efficiently as reasonably possible to protect
22 children in the Class from the ongoing harms of dangerous housing practices and other
23 practices being addressed in this case. Staffing the case with multiple law firms was the most
24 efficient way for Plaintiffs' Counsel to utilize their complementary expertise and skills to
25 prosecute the case properly and effectively. Further, Plaintiffs' Counsel utilized junior
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1 attorneys and paralegals to further billing efficiency, by assigning them valuable tasks, such as
 2 the time-intensive review of some of Defendants’ discovery productions, that would have
 3 otherwise been performed by attorneys with higher billing rates. Juneja Decl. ¶¶ 29-32; Welch
 4 Decl. ¶ 15. The Ninth Circuit recognizes that effective preparation and prosecution of a
 5 complex case often involves the kind of collaboration that occurs when multiple attorneys are
 6 working together, and that staffing a case with multiple attorneys for strategizing and
 7 coordinating work is reasonable. *See, e.g., Davis v. City and Cnty. of San Francisco*, 976 F.2d
 8 1536, 1544 (9th Cir. 1992) (“We have previously recognized that broad-based class litigation
 9 often requires the participation of multiple attorneys.”); *Mendez v. Cnty. of San Bernardino*,
 10 540 F.3d 1109, 1129 (9th Cir. 2008) (“Even duplicative work, however, is not a justification
 11 for cutting a fee, unless ‘the lawyer does *unnecessarily* duplicative work.”) (emphasis in
 12 original), *overruled on other grounds by Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Cir.
 13 2014); *see also Johnson v. Univ. Coll.*, 706 F.2d 1205, 1208 (11th Cir. 1983) (“The use in
 14 involved litigation of a team of attorneys who divide up the work is common today for both
 15 plaintiff and defense work,” and “a reduction is warranted only if the attorneys are
 16 unreasonably doing the same work.”); *MacDonald v. Ford Motor Co.*, No. 13-CV-02988-JST,
 17 2016 WL 3055643, at *4 (N.D. Cal. May 31, 2016) (“This was a large, putative class action.
 18 In such cases, some number of intra-office conferences are not only to be expected, but will
 19 often result in a savings of attorney time by ensuring that all attorneys on a team are kept
 20 apprised of important information about the case as it becomes available.”).

21 Plaintiffs’ Counsel’s declarations and time sheets show they did not engage in
 22 unnecessarily duplicative billing, but rather that they strategically divided necessary tasks
 23 based on attorney expertise and capacity, which contributed to the excellent and comparatively
 24 swift results achieved. Carney Decl. ¶ 11, Ex. B; Juneja Decl. ¶¶ 24-25, Ex. C; Kas Decl.
 25 ¶¶ 18-19, Ex. C; Lin Decl. Ex. D; Welch Decl. ¶¶ 16-17, Ex. B. *See Moreno*, 534 F.3d at 1112
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1 (noting, “It must also be kept in mind that lawyers are not likely to spend unnecessary time on
 2 contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both
 3 the result and the amount of the fee. It would therefore be the highly atypical civil rights case
 4 where plaintiff’s lawyer engages in churning.”). Any duplication is more than accounted for in
 5 the lodestar reductions that Plaintiffs’ Counsel have already made in their request, and further
 6 reduction to Plaintiffs’ Counsel’s requested hours would not be warranted. Accordingly, the
 7 Court should find that Plaintiffs’ Counsel’s claimed hours are reasonable and support the
 8 Court’s approval of the mediated amount.

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 10 **2. Plaintiffs’ Counsel’s Hourly Rates Are Reasonable, Supporting The**
 11 **Mediated Amount.**

12 Counsel are entitled to compensation at the prevailing market rate for attorneys of
 13 similar skill, experience, and reputation conducting similar work. *Blum*, 465 U.S. at 896 n.11.
 14 Typically, for the purpose of the lodestar calculation, a reasonable hourly rate is one that is “in
 15 line with those prevailing in the community for similar services by lawyers of reasonably
 16 comparable skill, experience, and reputation.” *Id.*

17 This principle applies “regardless of whether plaintiff is represented by private or
 18 nonprofit counsel.” *Id.* at 895. Rates should not be reduced merely because the work
 19 performed is pro bono, or by a non-profit organization or legal aid society. *See Nadarajah v.*
 20 *Holder*, 569 F.3d 906, 931 (9th Cir. 2009) (Tallman, J., concurring) (“It does not matter
 21 whether the attorneys are typically private or public-interest counsel.”); *Rosie D. ex rel. John*
 22 *D. v. Patrick*, 593 F. Supp. 2d 325, 330 (D. Mass. 2009).

23 In this case, the hourly rates recited by Plaintiffs’ Counsel are clearly “in line” with the
 24 prevailing market rates in this community. More specifically, the hourly rates charged by the
 25 attorneys and paralegals here are in line with the range of rates charged by Seattle’s legal
 26 market for similarly complex work, even though higher San Francisco Bay Area and Los

1 Angeles rates might have been requested by the out-of-state attorneys. *See, e.g., Guam Soc’y*
 2 *of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 702 (9th Cir. 1996)). The attorneys’
 3 rates formula utilized here is based on the billing formula used by one of Plaintiffs’ Counsel,
 4 Disability Rights Washington, which has been approved by courts and paid by defendants with
 5 whom Disability Rights Washington has settled cases in the past. Kas Decl. ¶ 24. *See, e.g., In*
 6 *re Animation Workers Antitrust Litig.*, No. 14-CV-4062-LHK, 2016 WL 6663005, at *6 (N.D.
 7 Cal. Nov. 11, 2016) (“An attorney’s actual billing rate is presumptively appropriate to use as
 8 the lodestar market rate.”). Salvador A. Mungia, a local attorney who has served as the
 9 President of the Washington State Bar Association and has extensive experience in litigating in
 10 state and federal courts throughout the state, has reviewed the hourly rates presented by
 11 Plaintiffs’ Counsel, including their paralegals and discovery support professional, and believes
 12 the rates to be reasonable for similarly situated practitioners within the local market. Mungia
 13 Decl. ¶ 23.

14 The rates recited by Plaintiffs are comparable to those that courts have deemed
 15 reasonable in Washington in other class action and complex cases. *See, e.g., Wagafe v. Trump*,
 16 No. C17-00094 RAJ, 2020 WL 2494726, at *1 (W.D. Wash. May 14, 2020) (finding
 17 reasonable hourly rates ranging from \$415.36 to \$815.62 in 2018 for attorneys from various
 18 public interest organizations in a class action lawsuit challenging the USCIS’s unlawful delay
 19 and denial of citizenship applications); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322,
 20 1326-27 (W.D. Wash. 2009) (finding rates charged by two Seattle law firms ranging from
 21 \$415 to \$760 were reasonable for the Seattle market in a class action litigation lawsuit);
 22 *Amazon.com, Inc. v. Wong*, No. C19-0990JLR, 2022 WL 1092518, at *2 (W.D. Wash. Apr. 12,
 23 2022) (finding reasonable for the Seattle market “the hourly rates used by Plaintiffs’ counsel,
 24 which range from \$535 to \$785 for attorneys and \$215 for paralegals”). These rates are also in
 25 line for other federal class action litigation involving systemic ADA claims. For example, in
 26

1 2009 in the *Rosie D.* case, the trial court awarded attorneys hourly rates ranging from \$262 to
 2 \$685, and paralegals hourly rates from \$190 to \$225. *Rosie D.*, 593 F. Supp. 2d at 330.⁴

3 That the rates recited by Plaintiffs' Counsel are reasonable in light of their highly-
 4 sought-after and specialized expertise is further supported by the excellent result that counsel
 5 obtained on behalf of the Class. The Ninth Circuit instructs that, where counsel exhibit
 6 exceptional skill and achieve outstanding results, it should be reflected in the hourly rates used
 7 to calculate the lodestar. *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.9 (9th Cir. 1996);
 8 *see also Cruz ex rel. Cruz v. Alhambra Sch. Dist.*, 601 F. Supp. 2d 1183, 1193 (C.D. Cal.
 9 2009). The high quality of the representation and impressive settlement achieved demonstrate
 10 the reasonableness of Plaintiffs' Counsel's lodestar. *See, e.g., Moreno*, 534 F.3d at 1114-15.
 11 Accordingly, approval of the mediated amount is supported by the reasonableness of the rates
 12 that Plaintiffs' Counsel used to calculate their fee request, which is already a reduction of their
 13 actual lodestar.

14 **C. Plaintiffs' Requested Costs and Expenses Are Reasonable, Supporting the**
 15 **Mediated Amount.**

16 A prevailing party under 42 U.S.C. § 1988 "may recover as part of the award of
 17 attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying
 18 client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and
 19 citations omitted). The Ninth Circuit has held that an award to a prevailing party "can include
 20 reimbursement for out-of-pocket expenses including . . . travel, courier and copying costs."
 21

22 _____
 23 ⁴ The rates are also supported by national billing rate surveys and publications with information about the
 24 local Washington market. Wolter Kluwer's ELM Solutions' 2020 Real Rate Report showed that in Seattle in that
 25 year, for partners, the median hourly billing in 2020 was \$505 and the 75th percentile was \$653, and that for
 26 associates, the median hourly billing rate in 2020 was \$371 and the 75th percentile was \$470. Juneja Decl., Ex. D. ELM Solutions also found that the Seattle area had "a significant spike in hourly rates" from 2020 to 2021, with an average billing rate increase of 11% from 2020 to 2021. Juneja Decl., Ex. D. The Recorder reported that, while nationally, the average billing rate for a paralegal is about \$300 per hour, the "Pacific region (Washington, Oregon and California) had the highest billing rate [for paralegals], at \$347 per hour," well above the \$200 per hour rate recited for paralegal work here. Juneja Decl., Ex. F.

1 *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010) (internal quotation
 2 marks and citation omitted). Other recoverable expenses include expenses related to
 3 discovery, among others. *See Harris*, 24 F.3d at 19-20 (noting that “expenses related to
 4 discovery” are recoverable).

5 As summarized in the table on page 6 above, Plaintiffs’ Counsel have incurred
 6 approximately \$19,258.27 in expenses in out-of-pocket costs as part of this litigation, for
 7 which they seek reimbursement as part of, and not in addition to, the \$2.15 million request.
 8 Plaintiffs’ Counsel seeks reimbursement for taxable and commonly reimbursed costs,
 9 including filing and process serving fees, travel expenses related to investigation, negotiation,
 10 and mediation, mediation fees, deposition transcripts, and discovery document management
 11 fees. Juneja Decl. ¶ 33, Ex. B; Kas Decl. ¶ 20, Ex. B; Lin Decl. ¶ 15, Ex. E; Welch Decl. ¶ 23,
 12 Ex. C.

13 III. CONCLUSION

14 For the reasons set forth above, Plaintiffs respectfully requests that this Court award
 15 Plaintiffs’ Counsel attorneys’ fees, costs, and expenses in the mediated and agreed upon
 16 amount of \$2,150,000, from case inception until the date this Court grants final approval to the
 17 Settlement Agreement.

18 Dated: August 5, 2022

19 Respectfully submitted,

20 **DISABILITY RIGHTS WASHINGTON**

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