

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Manuel de Melendres, et al.,  
Plaintiffs,

v.

Maricopa, County of, et al.,  
Defendants.

No. CV-07-02513-PHX-GMS

**ORDER**

Pending before this Court is Plaintiffs' Motion for Award of Attorneys' Fees and Related Non-Taxable Expenses (Doc. 608). As prevailing parties on their civil rights claims, Plaintiffs qualify for an attorneys' fees award under the statute. Defendants do not contest that the Plaintiffs are so entitled. Further, both Plaintiffs and Defendants acknowledge that the "lodestar" method is the customary means used to calculate a reasonable fee award. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). Under that method of calculation, however, Defendants contest the hourly rates charged by Plaintiffs' attorneys. They further challenge the number of hours for which Plaintiffs' attorneys seek to recover contending that they were not "reasonably expended" on the case.

**1. Hourly Rates**

"Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits. . . . '[R]ates outside the forum may be used if local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to handle

1 properly the case.’’ *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)  
2 (quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)). Defendants contend that  
3 in determining and awarding a reasonable hourly rate this Court should apply the  
4 *Economics of Law Practice* published in 2013 concerning prevailing billing rates in  
5 Maricopa County, Arizona.

6 **a. Covington & Burling**

7 Upon the withdrawal of Steptoe & Johnson from the Plaintiffs’ representation, the  
8 local ACLU and the ACLU Foundation Immigration Project (“the Project”) made a  
9 number of unsuccessful efforts to engage law firms in Maricopa County and southern  
10 California to take over the Plaintiffs’ representation. Yet, as no party seems to contest,  
11 and as no party could credibly contest, taking on a lawsuit of this size required a firm to  
12 venture a large amount of resources to preparation and trial. No local law firm either was  
13 able or willing to undertake that level of commitment. Hence, the closest firm both  
14 capable and willing to undertake such an endeavor that Plaintiffs could locate was the  
15 Silicon Valley, California office of Covington & Burling. Thus, in this case, the Court  
16 will base its award to Covington & Burling on what the Court believes to be Silicon  
17 Valley rates that are reasonable under the circumstances.

18 The Court recognizes that Covington incurred a substantial risk of receiving no  
19 reimbursement for its services in agreeing to undertake this case. Covington also frankly  
20 avowed, however, that it does, on occasion, charge clients rates that are lower than its  
21 standard billing rates for matters in which significant amounts will be billed. This is  
22 certainly such a case. Covington further acknowledged that it used this lawsuit to  
23 provide its younger lawyers with experience in trial preparation and at trial, and that it  
24 might not have always passed on such expense to a paying client at standard billable  
25 rates. While the Court commends Covington for providing training to young attorneys,  
26 and is convinced that the services of those attorneys provided value that should be  
27 compensated in this matter, the Court has made some slight downward adjustments in  
28 Covington’s billing rates to reflect the above realities. Understandably, because the

representation lasted for a considerable time, the timekeeper's rates often rose as did their level of experience. The Court in setting the rates of reimbursement, took into account the value of experience and the rising rates of the attorneys, but also for the reasons reflected above, did not always make a correspondingly concomitant raise in rates. Thus, the Court assigned to Covington's timekeepers billable rates at the following rates of pay<sup>1</sup>:

<b>Employee</b>	<b>Year(s)</b>	<b>Rate</b>
Stanley Young	2010–2011	\$630
	2012–2013	\$650
Andrew C. Byrnes	2010–2012	\$550
	2012–2013	\$570
Lesli A. Rawles Gallagher	2010	\$350
	2010–2011	\$375
	2012	\$400
	2013	\$425
David R. Hults	2012–2013	\$375
Precilla C. Mandujano	2012–2013	\$175
Seth F. Kalman	2010–2012	\$175
Tammy Albarrán	2010–2011	\$500
	2012–2013	\$550
Krzysztof Bebenek	2011–2012	\$300
Stephen C. Chien	2010–2011	\$450
Kevin J. Hickey	2010	\$300
	2010–2011	\$330
Bhanu K. Sadasivan	2010–2011	\$430
	2012	\$475
Matthew J. Steilen	2010	\$310
	2010–2011	\$340
Paul N. Watkins	2010	\$350
	2011	\$360
Romeo B. Berana	2010	\$175
Ellen D. Chiulos	2010	\$175
Rohna R. Houston	2010–2012	\$175
Julie R. Romanow	2010–2013	\$175

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<sup>1</sup> The chart in Exhibit G also includes time entries from timekeepers Joel M. Frozena, Paul C. Saunders, Jeannie Lieu, and Joshua Hurwit that appear to have been included in the total fee requested. These were all small entries for a few hours per individual. Covington did not list these individuals in its brief or explain their role, and it indicated it was only seeking recover for fees from the described members. (Doc. 639-5.) Therefore, the fees for these four individuals are not awarded.

Kim M. Sydorak	2011–2012	\$175
Emily D. Doan	2010–2011	\$175
Jacqueline K. Trinh	2010	\$175
Daisy Chen	2010	\$110
Cheryl A. Lam	2012	\$50
Maria Chavez	2012	\$135
Pierre E. Kressmann	2011	\$175
Benjamin E. Suess	2010–2013	\$175
Anthony V. Pazelt	2010	\$175

**b. The ACLU Foundation Immigrant Rights Project**

Considerations of a somewhat different nature apply to considering the appropriate legal rate of the ACLU Immigrant Rights Project (“the Project”) and its lead counsel Cecillia Wang. The Project is based in San Francisco and has discretion in the cases in which it chooses to intervene nationwide. The Project, of course, did not need to intercede in Arizona if it did not believe the rates it would likely be awarded justified the intervention. Nevertheless, the Court doubts that the Project determines whether to provide representation in a case primarily with reference to the amount of a possible fee award. This case presented issues of immigrants’ rights in which the Project has acquired demonstrated experience, expertise and specialization at a level that is otherwise unavailable in Maricopa County. It provided significant value to the Plaintiff, both at and before trial. The Court will thus award the Project’s attorneys’ fees based on the Court’s determination of what is a reasonable San Francisco rate which will be slightly adjusted for the comparative experience and rates of other attorneys on the Plaintiffs’ team, and the value that the Court determined was provided by the Project’s Counsel.

<u>Employee</u>	<u>Year(s)</u>	<u>Rate</u>
Cecillia D. Wang	2009	\$600
	2010–2011	\$620
	2012–2013	\$650
	Adjusted Average <sup>2</sup>	\$635

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<sup>2</sup> The Adjusted Average is the rate the Court used to multiply by the total of Ms. Wang’s hours for all years. Although the Court has assigned hourly rates per year, the Project did not provide subtotals of the hours spent in each year. The Adjusted Average was determined by calculating the average proposed hourly rate from the total fee and hours submitted, and then creating the Adjusted Average based on the adjusted yearly

Andre I. Segura      2011–2013      \$350

**c. Mexican American Legal Defense and Educational Fund**

Plaintiffs were also represented in this action by attorneys from the Los Angeles Regional Office of the Mexican American Legal Defense and Educational Fund (“MALDEF”). MALDEF is a national nonprofit legal organization that specializes in civil rights impact litigation on behalf of Latinos in the areas of education, employment, political access and immigrants’ rights. It was, therefore, understandably interested in this lawsuit as it pertained to areas of MALDEF’s special interest. MALDEF has represented the Plaintiffs from the inception of this case. While the expertise that MALDEF brought to the benefit of the Plaintiff class may be in many respects duplicative of the benefit provided to the Plaintiffs by the attorneys of the Project to the extent that it related to immigrants’ rights, Defendants do not contest that MALDEF has expertise representing the political rights of Latinos, nor do they contest that this lawsuit presented important issues related to the disparate treatment of members of the Plaintiff class due to their ethnicity. Any adjustments in the overall fee to be paid to all of the attorneys made by the Court due to their overlapping expertise, will be deducted in considering the overall reasonableness of the hours billed by the Plaintiffs’ attorneys, and not in sharply adjusting legal rates. It is appropriate under these circumstances for the Court to award MALDEF’s fees based on its determination of what is a reasonable Los Angeles rate, especially when the rates sought by MALDEF are lower than those sought by the Northern California firms.

<b><u>Employee</u></b>	<b><u>Year(s)</u></b>	<b><u>Rate</u></b>
Nancy Ramirez	2010	\$500
	2011	\$525
	2012–2013	\$550
Martha Torres	2010	\$125

**d. ACLU Foundation of Arizona**

The ACLU Foundation of Arizona is a small operation and was unable to handle

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rates actually awarded.

1 this lawsuit without the assistance of other counsel. Nevertheless, it did have counsel that  
 2 provided significant and valuable work on this case. Those counsel will be reimbursed at  
 3 Maricopa County rates.

<u>Employee</u>	<u>Year(s)</u>	<u>Rate</u>
Dan J. Pachoda	2008–2013	\$350
Kelly J. Flood	2012	\$300
Anne Lai	2008–2009	\$175
	2010	\$260
	2011	\$275
	2012	\$300
	2013	\$310
James Duff Lyall	2011–2012	\$175
Gloria A. Torres	2011–2013	\$150

## 11           **2.     Reasonableness of Hours Billed**

12           With multiple attorneys from multiple entities representing the plaintiffs on this  
 13 case, there was some significant overlap among the various counsel in Plaintiffs’  
 14 preparation and litigation of this case. As several examples offered by the Defendants  
 15 demonstrate, the participation of multiple parties in the trial proceedings, and some of the  
 16 significant matters proceeding to trial, resulted in expenses that while, perhaps  
 17 understandable, were more than is reasonable and more than should be borne by  
 18 Defendants. For example, despite the limited number of witnesses in this case, nine  
 19 different attorneys appeared at trial for the Plaintiffs. Further, expenses on the pre-trial  
 20 briefings were excessive even given the desire to obtain the expertise of various attorneys  
 21 on this matter. Further, there was some duplication of expense that occurred within  
 22 Covington & Burling, which during the course of this lawsuit introduced a number of  
 23 different attorneys to this case.

24           It is appropriate for a court to reduce the lodestar for duplicative work. *Chemical*  
 25 *Bank v. City of Seattle (In re Wash. Publ. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291,  
 26 1298 (9th Cir. 1994). The parties indicated at oral argument that the request is a joint  
 27 one, and that they should all bear the expense of any excessive duplication. The Court,  
 28 therefore has reviewed the invoices and made its best calculation of the amount of the

1 overlap and has reduced by 20% the hours billed by all counsel to account for excessive  
2 or duplicative work.

3 **3. Costs**

4 The costs sought are similarly reduced by 20% to avoid unnecessary duplication in  
5 the fee caused by the multiple counsel involved in the litigation for the same reasons as  
6 set forth above.

7 This award covers fees incurred by the parties up and through October 2, 2013 and  
8 is without prejudice to further requests by Plaintiffs as was further set forth at the hearing  
9 on this Motion. For the reasons stated above the Court grants Plaintiffs' Motion.

10 **IT IS THEREFORE ORDERED** granting the Motion for Attorney Fees and  
11 Related Non-Taxable Expenses (Doc. 608) and awards the following amounts to the four  
12 Plaintiffs' counsel as follows:

13 1. Covington & Burling, \$3,304,038.80 in attorney's fees and \$150,036.16 in  
14 non-taxable expenses for a total of \$3,454,074.96;

15 2. The Project, \$420,331.92 in attorney's fees and \$8,954.78 in non-taxable  
16 expenses for a total of \$429,286.70;

17 3. MALDEF, \$159,678.00 in attorney's fees and \$7,670.62 in non-taxable  
18 expenses for a total of \$167,348.62;

19 4. ACLU of Arizona, \$383,356.40 in attorney's fees and \$5,174.98 in non-  
20 taxable expenses for a total of \$388,531.38.

21 Dated this 11th day of September, 2014.

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26 G. Murray Snow  
27 United States District Judge  
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