

THE HONORABLE THOMAS S. ZILLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T.R., by and through his guardian and next friend, R.R.; S.P., by and through her mother and next friend, D.H.; C.A., by and through her mother and next friend, A.A.; T.F., by and through her father and next friend, D.F.; P.S., by and through his mother and next friend, W.S.; T.V., by and through his guardian and next friend. C.D.; E.H. by and through his mother and next friend, C.H.; E.D., by and through his mother and next friend, A.D.; and L.F.S., by and through his mother and next friend, B.S.,

Plaintiffs,

v.

KEVIN QUIGLEY, not individually, but solely in his official capacity as Secretary of the Washington State Department of Social and Health Services; and DOROTHY TEETER, not individually, but solely in her official capacity as the Director of the Washington State Health Care Authority,

Defendant.

No. 2:09-cv-01677-TSZ

PETITION AND MEMORANDUM IN SUPPORT OF PETITION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS

NOTE FOR MOTION CALENDAR:

Friday, December 13, 2013

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

I. INTRODUCTION AND FACTUAL BACKGROUND 1

 A. Relief Sought and Efforts of Class Counsel 2

 B. Negotiation of Attorneys’ Fees 5

II. STATEMENT OF AUTHORITIES 6

 A. Plaintiffs are the Prevailing Parties 6

 B. The Fees Agreed to by the Parties Are Reasonable 7

 1. The Amount of Time Expended Was Reasonable 9

 2. The Hourly Rates Are Reasonable 19

 C. Litigation Costs and Expert Fees Are Recoverable 21

 D. Fee Awards Are Properly Made Payable to Class Counsel Pursuant to Retainer Agreement 22

 E. Notice of Fee Award Under Rule 23(h) is Directed to Class Members in a Reasonable Manner 24

III. CONCLUSION 24

TABLE OF AUTHORITIES

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

Antoninetti v. Chipotle Mexican Grill, Inc.,
643 F.3d 1165 (9th Cir. 2010)7

Astrue v. Ratliff,
560 U.S. 586, 130 S. Ct. 2521 (2010).....22

Blum v. Stenson,
465 U.S. 886 (1984).....7, 19

Buckhannon Board & Care Home, Inc. v. West Virginia Dep’t of Health & Human Res.,
532 U.S. 598 (2001).....6

Bywaters v. United States,
670 F.3d 1221 (Fed. Cir. 2012).....7

Chalmers v. City of Los Angeles,
796 F.2d 1205 (9th Cir. 1986)19

Dang v. Cross,
422 F.3d 800 (9th Cir. 2005)21

Dennis v. Chang,
611 F.2d 1302 (9th Cir. 1980)23

Donkerbrook v. Title Guar. Escrow Servs., Inc.,
No. 10-cv-00616, 2011 WL 3649539 (D. Haw. Aug. 18, 2011)6

Elusta v. City of Chicago,
696 F.3d 690 (7th Cir. 2012)24

Evans v. Jeff D.,
475 U.S. 717 (1986).....22

Gates v. Deukmejian,
987 F.2d 1392 (9th Cir. 1992)8

Gilbrook v. City of Westminster,
177 F.3d 839 (9th Cir. 1999)22

Gillman v. Astrue,
829 F. Supp. 2d 999 (W.D. Wash. 2011).....22

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

Guam Soc. Of Obstetricians & Gynecologists v. Ada,
 100 F.3d 691 (9th Cir. 1996)20

Harris v. Marhoefer,
 24 F.3d 16 (9th Cir. 1994)21

Hensley v. Eckerhart,
 461 U.S. 424 (1983).....7, 9

Hvorcik v. Sheahan,
 1994 WL 521069 (N.D. Ill. Sept. 22, 1994)23

In re Bluetooth Headset Products Liab. Litig.,
 654 F.3d 935 (9th Cir. 2011)7

Katie A., ex rel. Ludin v. Los Angeles County,
 481 F.3d 1150 (9th Cir. 2007)3

Lovell v. Chandler,
 303 F.3d 1039 (9th Cir. 2002)21

Masters v. Wilhelmina Model Agency, Inc.,
 473 F.3d 423 (2d Cir. 2007).....24

Mathews-Sheets v. Astrue,
 653 F.3d 560 (7th Cir. 2011)22

Missouri v. Jenkins by Agyei,
 491 U.S. 274 (1989).....8

Morales v. City of San Rafael,
 96 F.3d 359 (9th Cir. 1996)7

Pelletz v. Weyerhaeuser Co.,
 592 F. Supp. 2d 1322 (W.D. Wash. 2009).....20

Pennsylvania v. Del. Valley Citizens' Council for Clean Air,
 478 U.S. 546 (1987).....7

Perez v. Cate,
 632 F.3d 553 (9th Cir. 2011)8

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

Phillips Petroleum Co. v. Shutts,
 472 U.S. 797 (1985).....23

Prison Legal News v. Schwarzenegger,
 608 F.3d 446 (9th Cir. 2010)6

Rosie D. ex rel. John D. v. Patrick,
 593 F. Supp. 2d 325 (D. Mass. 2009).....18, 19

Runyon v. Fasi,
 762 F. Supp. 280 (D. Haw. 1991).....19

Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.,
 489 U.S. 782 (1989).....6

Thornberry v. Delta Air Lines Inc.,
 676 F.2d 1240 (9th Cir.1982)21

United States ex rel. Virani v. Jerry M. Lewis Truck Parts & Equip., Inc.,
 89 F.3d 574 (9th Cir. 1996)24

Venegas v. Mitchell,
 495 U.S. 82 (1990).....22

Woods v. Carey,
 09-16113, 2013 WL 3722083 (9th Cir. July 17, 2013)21

Zucker v. Occidental Petroleum Corp.,
 192 F.3d 1323 (9th Cir. 1999)7

STATUTES

29 U.S.C. § 794e.....2

42 U.S.C. § 1396.....1

42 U.S.C. § 1983.....1

42 U.S.C. § 1988..... passim

42 U.S.C. § 1988(b)22, 23

42 U.S.C. § 10801.....2

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

42 U.S.C. § 12132.....1

42 U.S.C. § 12205.....1, 6, 7, 8, 21

42 U.S.C. § 15041.....2

RCW 71A.10.080.....2

OTHER AUTHORITIES

Fed. R. Civ. P. 23(h).....1, 2, 6, 7

Fed. R. Civ. P. 23(h)(1).....24

Fed. R. Civ. P. 54(d)(2).....1

1 On August 29, 2013, Plaintiffs filed their Motion for Preliminary Approval of the
 2 settlement reached with the State of Washington to reform Washington's Medicaid system for
 3 youth mental health services. On September 27, 2013, the Court granted preliminary approval of
 4 the settlement, and Plaintiffs therefore request that the Court also approve an agreed award of
 5 reasonable attorneys' fees and costs in the amount of \$3,100,000.00 pursuant to Rules 23(h) and
 6 54(d)(2), Fed. R. Civ. P., and 42 U.S.C. § 1988 and § 12205.
 7
 8
 9
 10
 11

12 I. INTRODUCTION AND FACTUAL BACKGROUND

13 Plaintiffs filed this lawsuit nearly four years ago, on November 24, 2009, after almost a
 14 year of investigation and discussions with the State regarding the lack of intensive home and
 15 community-based services available to Washington's mentally ill Medicaid youth. (Carlson
 16 Decl. ¶¶ 24-25.) At the time of the filing, many children with significant mental health needs
 17 had only limited access to services, via weekly office-based therapy and medication
 18 management. Children with the need for more intensive services were faced with the option of
 19 either under-treating or submitting to institutionalization, *i.e.*, placement in an acute care
 20 psychiatric hospital or in a long-term institutional mental health facility. ECF No. 1, Pls.'
 21 Compl. at ¶ 4. Even after institutionalized children were deemed fit for discharge, the lack of
 22 services post-discharge often prolonged their institutional stays, or resulted in re-
 23 institutionalization or other placement outside of the home after discharge. *Id.* at ¶ 6-9.
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34

35 To redress these conditions, Plaintiffs and their counsel brought this lawsuit under 42
 36 U.S.C. § 1983 to enforce Title XIX of the Social Security Act ("Medicaid Act"), 42 U.S.C.
 37 § 1396 *et seq.* and the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12132 *et seq.*
 38 Compl. ¶¶ 215-235.
 39
 40
 41
 42

43 The result achieved for the class, subject to this Court's approval, amounts to nothing less
 44 than a landmark reform of Washington State's Medicaid system: statewide access to Intensive
 45 Home and Community Based Services for Washington's Medicaid-eligible children with mental
 46 health needs as mandated by the Early and Periodic Screening, Diagnostic and Treatment
 47 ("EPSDT") provisions of the Medicaid Act and the Integration Mandate of the ADA. Reaching
 48
 49
 50
 51

1 agreement to provide home and community-based mental health services did not come easily.
 2 Plaintiffs' counsel have spent more than 12,000 hours—a lodestar of \$5,176,053 when
 3 multiplied by counsels' reasonable hourly rates—to obtain these results. They also expended
 4 over \$222,593.24 in out-of-pocket expenses.
 5
 6
 7

8 Under federal law, Plaintiffs' entitlement to an award of reasonable attorneys' fees is
 9 beyond dispute. *See* Rules 23(h) and 54(d)(2), Fed. R. Civ. P., and 42 U.S.C. § 1988. Moreover,
 10 the \$3,100,000 in attorneys' fees and costs they seek and which the State, after extensive arm's
 11 length negotiations has agreed to pay, represents a *43% reduction* in the total fees and costs to
 12 which Plaintiffs' counsel are presumptively entitled under the lodestar approach adopted by the
 13 Ninth Circuit in these cases.
 14
 15
 16
 17
 18
 19

20 For the reasons set forth below, Plaintiffs respectfully request that after the appropriate
 21 notice to the Plaintiffs and class members has been completed, that the Court approve the agreed
 22 \$3.1 million award of fees and costs.
 23
 24

25 **A. Relief Sought and Efforts of Class Counsel**
 26

27 The need for this class action lawsuit and the basis for Plaintiffs' Complaint was
 28 established by the initial work of counsel Disability Rights Washington (“DRW”).¹ For nearly a
 29 year prior to the commencement of this lawsuit, DRW engaged in extensive research and
 30 investigation of Washington's youth mental health services in order to better understand the
 31 systemic problems in Washington's youth Medicaid programs. DRW attended and observed
 32 treatment and wraparound planning meetings, conducted interviews with therapists and social
 33 workers, and conducted reviews of individual treatment records for dozens of youth whom had
 34
 35
 36
 37
 38
 39
 40

41 ¹ DRW is a private non-profit organization that serves as the designated Protection and Advocacy System for
 42 the State of Washington for citizens of this state who have physical, mental, or developmental disabilities pursuant
 43 to the “Developmental Disabilities Assistance and Bill of Rights Acts” (DD), 42 U.S.C. § 15041 et. seq.; the
 44 “Protection and Advocacy for Individuals with Mental Illnesses Act” (PAIMI), as amended, 42 U.S.C. § 10801, et
 45 seq.; and the “Protection and Advocacy for Individual Rights” (PAIR), 29 U.S.C. § 794e; and RCW 71A.10.080.
 46 As such, DRW is funded and mandated to conduct investigations of abuse and neglect of individuals with
 47 disabilities and mental illness. (Carlson Decl. ¶ 2.) Pursuant to its federal mandates, DRW routinely conducts
 48 investigations and advocates based upon the findings of those investigations and has brought systemic lawsuits
 49 addressing services that are delivered through Medicaid, services delivered to youth, services delivered to people
 50 with mental illness and claims for violations of the Fourteenth Amendment, the Americans with Disabilities Act and
 51 the Rehabilitation Act. (Carlson Decl. ¶¶ 2-7.)

1 been placed on waiting lists for treatment in a Children’s Long-term Inpatient Program (“CLIP”)
2 facility, other local inpatient treatment facilities or intensive day programs. (Carlson Decl. ¶ 24.)
3
4 In sum, DRW’s investigation laid the groundwork for understanding the need for and viability of
5 this class action lawsuit, as well as identifying the named plaintiffs who serve as class
6
7 representatives in this litigation.
8
9

10 In the spring of 2009, DRW brought in additional resources by partnering with Perkins
11 Coie LLP, the National Center for Youth Law (NCYL), and the National Health Law Program
12 (NHeLP). Perkins Coie leveraged its resources as a large global law firm by providing support
13 around discovery requests and responses and legal research needed to shape the Complaint and
14 future filings. (Carlson Decl. ¶ 27.) DRW engaged NCYL because of NCYL’s experience
15 litigating a similar class action case in California, *Katie A., ex rel. Ludin v. Los Angeles County*,
16 481 F.3d 1150 (9th Cir. 2007). (Gardner Decl. ¶ 13.) NCYL also brought to the table its
17 specific expertise on children’s issues, particularly around the entitlement to services under the
18 children’s program of Medicaid, EPSDT. (Carlson Decl. ¶ 37; Gardner Decl. ¶¶ 12-14.) NHeLP
19 is a leading expert in the country on litigation of claims under the Medicaid Act and is also co-
20 counsel in the *Katie A.* lawsuit. (Lewis Decl. ¶ 5.) Each of these firms was confirmed as Class
21 Counsel on July 23, 2010. ECF No. 60.²
22
23
24
25
26
27
28
29
30
31
32

33 After filing their Complaint, Plaintiffs engaged in an intensive period of discovery and
34 expert investigation with the Defendants. The parties ultimately stipulated to a class definition
35 that led to this Court certifying the class on July 23, 2010. Further discovery, leading to a
36 preliminary injunction motion that Plaintiffs were prepared to file, brought the parties to the
37 mediation table beginning on January 5, 2011. (Carlson Decl. ¶¶ 55-56.) Fourteen months, and
38 over 30 full-day mediation sessions, ensued. During these sessions, the parties grappled with the
39 economic recession that Washington faced, explored the possibility of full settlement, and
40 outlined what a mental health care system that met the needs of Plaintiffs would entail, including
41
42
43
44
45
46
47
48
49

50 ² Patrick Gardner, lead counsel at NCYL, formed a new entity Young Minds Advocacy Project that was
51 appointed class counsel on January 8, 2013. ECF No. 112.

1 what changes would need to occur from the perspective of the families, health care providers,
 2 the regional support networks contracting with the providers and the State agencies themselves.
 3 (Carlson Decl. ¶¶ 56-68.) These efforts ultimately led to the Interim Agreement, which was
 4 approved by the Court on March 7, 2012. ECF No. 99, Interim Agreement; ECF No. 100, Order
 5 Regarding Interim Agreement.
 6
 7
 8
 9

10 The Interim Agreement set forth the foundation for implementation of the Intensive
 11 Home and Community Based Services at issue in the Complaint and enumerated a set of detailed
 12 enforceable commitments made by Defendants that laid the groundwork for the Final Settlement,
 13 including, but not limited to:
 14
 15

- 16 • Development of a funding strategy to expand capacity statewide for Washington
 17 Individualized Youth Services, defined as including intensive home and community
 18 based services. Interim Agreement ¶ 24.
- 19 • Reassessment of the needs for intensive home and community based mental health
 20 services for each of the named Plaintiffs enrolled in the WA Medicaid program and
 21 provision of medically necessary services to address such needs. *Id.* at ¶ 26.
- 22 • Development of a plan to screen children and youth who have a mental illness or
 23 condition and development of instructions and guidance to be provided to providers
 24 and agencies to perform such screening. *Id.* at ¶ 29.
- 25 • Establishment of a sustainable interagency governance structure that will establish
 26 processes for high level policy-making, program planning, oversight, and
 27 implementation of the Interim Agreement. *Id.* at ¶45.

28 ECF No. 99, Interim Agreement.
 29
 30
 31

32 In the following year, the parties worked diligently to implement the Interim Agreement
 33 and to negotiate, and ultimately reach agreement on, the Final Settlement that is set for a final
 34 approval hearing on December 19, 2013. The Final Settlement requires the State to provide
 35 Medicaid-eligible children with: (1) Intensive Care Coordination, (2) Intensive Home and
 36 Community Based Services, and (3) Mobile Crisis Intervention and Stabilization Services.
 37 These services will be provided in a coordinated, team-based approach called Wraparound with
 38 Intensive Services, or “WISE.” ECF 119-1, Final Settlement ¶ 20. Under the Final Settlement,
 39 the parties agreed that over the next five years the State will establish statewide capacity to
 40 provide WISE to all youth for whom intensive home and community based services are
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51

1 medically necessary. *Id.* ¶ 27. As set forth in detail in Plaintiffs’ Motion for Preliminary
2 Approval, the Final Settlement achieves complete relief for the Class. *See generally id.*; *see also*
3 Compl. ¶ 215-235 (setting forth claims for relief).
4
5

6 **B. Negotiation of Attorneys’ Fees**
7

8 In negotiating the interim and final settlements on the merits, the parties agreed that any
9 negotiation of the Plaintiffs’ attorneys’ fees claims would be deferred until an agreement on the
10 merits had been reached. The Parties also agreed that any money used to pay Plaintiffs’ fees
11 would be paid by the State out of funds that would not otherwise be available for the provision of
12 mental health services to the class. (McIlhenny Decl. ¶ 10.) As a result, the Parties ensured that
13 payment for the fees awarded will not result in the diminution of services to the Class.
14
15
16
17
18

19 The negotiation of the fees and costs to be awarded occurred in two stages: (1) after
20 Court approval of the Interim Agreement, for the time spent and costs incurred up until March 7,
21 2012; and (2) after the negotiating team had reached agreement on the proposed Settlement
22 Agreement, for time spent and costs incurred from March 8, 2012 through August 31, 2013. For
23 the time spent and costs incurred up until the Interim Agreement, the parties agreed upon an
24 award of \$2,100,000. For time spent and costs incurred up until the Final Settlement, the parties
25 agreed upon an award of \$1,000,000.
26
27
28
29
30
31
32

33 The total fees and costs the State has agreed to pay, therefore, is \$3.1 million. From the
34 Defendants’ perspective, agreeing upon and capping the State’s exposure at each stage of the
35 litigation provided a great benefit in a difficult budget environment. (McIlhenny Decl. ¶ 7.) The
36 State also avoided the possibility of extended fee litigation, as well as the possibility of having to
37 pay a higher award. From the Plaintiffs’ perspective, four of the Plaintiffs’ five law firms are
38 non-profit legal service providers whose ability to provide services to their constituents—largely
39 indigent youth and disabled populations—may be jeopardized by long periods of non-payment.
40 (Carlson Decl. ¶ 99.) Agreeing upon reasonable amounts to be paid for each stage of the
41 litigation therefore gave some assurances that the state would budget for, and ensure timely
42 payment of, a fair and reasonable fee award upon final court approval. (*Id.*)
43
44
45
46
47
48
49
50
51

II. STATEMENT OF AUTHORITIES

In class actions, reasonable attorneys' fees may be awarded where such fees are "authorized by law or by the parties' agreement." Fed R. Civ. P. 23(h).³ By this motion, Plaintiffs seek an award of reasonable attorneys' fees pursuant to their agreement with Defendants and two fee-shifting statutes, 42 U.S.C. § 1988 and § 12205, which allow recovery of reasonable attorneys' fees to a prevailing party in civil rights and disability discrimination cases, respectively.

A. Plaintiffs are the Prevailing Parties

Pursuant to 42 U.S.C. § 1988 and § 12205, a court may award reasonable attorneys' fees to a plaintiff who is a "prevailing party" in a civil rights or disability discrimination action. A prevailing party is "one who has succeeded on any significant claim affording it some of the relief sought, either *pendente lite* or at the conclusion of the litigation." *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791 (1989). The touchstone of the prevailing party inquiry is whether the litigation has resulted in a "material alteration of the legal relationship of the parties." *Id.* at 792-93. In settled cases such as this one, a plaintiff who obtains a consent decree or its equivalent that is enforceable by the court is the prevailing party even if the merits are never ruled upon by a court. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 451 (9th Cir. 2010) (applying § 1988) (citing *Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health & Human Res.*, 532 U.S. 598 (2001) (applying § 12205)).

This action meets those requirements squarely. As set forth above and in extensive detail in the Declaration of David Carlson, Plaintiffs' attorneys have successfully litigated the rights of the class and have achieved complete relief through systemic reform that will establish policies, procedures, and practices to provide intensive, community and home-based mental health services to Medicaid-eligible children across the State of Washington. (Carlson Decl. ¶¶ 56-79); *see also* ECF No. 119, Pls.' Mot. for Preliminary Approval of Class Action Settlement

³ Because the Plaintiffs and Defendants have negotiated and agreed upon the award of attorneys' fees, the award of such fees is independently authorized by Rule 23(h). *See, e.g., Donkerbrook v. Title Guar. Escrow Servs., Inc.*, No. 10-cv-00616, 2011 WL 3649539 at *4 (D. Haw. Aug. 18, 2011) ("[P]ursuant to Rule 23(h), the parties' Settlement Agreement alone is a sufficient basis for an award of reasonable attorneys' fees to Plaintiff.").

1 Agreement. Moreover, Defendants agree that Plaintiffs are the prevailing parties for purposes of
2 their entitlement to attorneys' fees and costs. (McIlhenny Decl. ¶ 6.)
3

4 **B. The Fees Agreed to by the Parties Are Reasonable**
5

6 Pursuant to Rule 23(h), the Court has an obligation to ensure that the amount of any
7 award is reasonable. *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328 (9th Cir.
8 1999). In making that determination, the "lodestar method" is the appropriate measure of
9 reasonable attorneys' fees in class actions brought under fee shifting statutes such as 42 U.S.C. §
10 1988 and § 12205. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.
11 2011) (applying § 1988); *Antoninetti v. Chipotle Mexican Grill, Inc.*, 643 F.3d 1165, 1176 (9th
12 Cir. 2010) (applying § 12205). Pursuant to that method, the court must first determine the
13 lodestar, which has been defined as: "the number of hours reasonably expended on the litigation
14 multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Such a
15 calculation should use "the prevailing market rates in the relevant community, regardless of
16 whether plaintiff is represented by private or nonprofit counsel." *Blum v. Stenson*, 465 U.S. 886,
17 895 (1984). This calculation "normally provides a 'reasonable' attorney's fee within the
18 meaning of the statute." *Id.* at 897 (citing *Hensley*, 461 U.S. at 433).
19
20
21
22
23
24
25
26
27
28
29
30

31 Moreover, "[t]here is a strong presumption that the lodestar figure represents a reasonable
32 fee." *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.8 (9th Cir. 1996); *see also Bywaters v.*
33 *United States*, 670 F.3d 1221, 1229 (Fed. Cir. 2012) ("[A]djustments to the lodestar figure 'are
34 proper only in certain rare and exceptional cases, supported by both specific evidence on the
35 record and detailed findings by the lower courts.'") (quoting *Pennsylvania v. Del. Valley*
36 *Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1987).
37
38
39
40
41

42 Complete fee logs and narrative descriptions of time entries for Plaintiffs' attorneys are
43 attached as exhibits to the declarations in support of this Motion. A summary of the total hours
44
45
46
47
48
49
50
51

1 spent by Plaintiffs' attorneys and professional staff through August 31, 2013, as well as current⁴
 2 hourly rates and lodestar calculations, are as follows:
 3

4 Law Firm	Rate Range	Hours	Lodestar
5 Disability Rights Washington	\$265 - \$425 (\$329 Avg.)	6,463.0	\$2,126,798.00
6 Perkins Coie LLP	\$250 - \$655 (\$470 Avg.)	1,835.1	\$893,942.50
7 National Center for Youth Law	\$345 - \$695 (\$503 avg.)	3,184.4	\$1,602,462.50
8 National Health Law Program	\$630 - \$655 (\$632 avg.)	284.7	\$180,066.00
9 Young Minds Advocacy Project	\$395 - \$695 (\$562 avg.)	662.9	\$372,784.00
10 TOTAL TO AUGUST 31, 2013	\$416 Avg.	12,430.1	\$5,176,053.00

11
 12 As these tables show, from the inception of this matter through August 31, 2013,
 13 Plaintiffs' attorneys and paralegals⁵ expended more than 12,000 hours in the pursuit of this case.
 14 The lodestar calculation for this period amounts to \$5,176,053.
 15
 16

17 However, after extensive arms-length negotiations, Plaintiffs and Defendants agreed that
 18 subject to court approval, Defendants will pay attorneys' fees and costs of \$2,100,000.00 for the
 19 period leading up to the Interim Agreement, and \$1,000,000 for the period of implementation of
 20 the Interim Agreement and negotiation of the Final Settlement. The total \$3,100,000 award
 21 encompasses all fees and expenses incurred by Plaintiffs' counsel through August 31, 2013.
 22 This amount represents a 40% reduction in Plaintiffs' fees for this period. Given the complete
 23 success achieved, Plaintiffs submit that this is a fair and reasonable fee that should be approved
 24 by the court.
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38

39
 40 ⁴ The use of current (as opposed to historical) rates to calculate the lodestar is proper in this multi-year
 41 litigation in order to compensate Plaintiffs and their counsel for the delay in award of fees. *Missouri v. Jenkins by*
 42 *Agyei*, 491 U.S. 274, 283-84 (1989) ("Clearly, compensation received several years after the services were rendered-
 43 as it frequently is in complex civil rights litigation-is not equivalent to the same dollar amount received reasonably
 44 promptly as the legal services are performed, as would normally be the case with private billings. We agree,
 45 therefore, that an appropriate adjustment for delay in payment-whether by the application of current rather than
 46 historic hourly rates or otherwise-is within the contemplation of the statute."); *see also Gates v. Deukmejian*, 987
 47 F.2d 1392, 1406 (9th Cir. 1992) ("We long have recognized that district courts have the discretion to compensate
 48 prevailing parties for any delay in the receipt of fees by awarding fees at current rather than historic rates in order to
 49 adjust for inflation and loss of the use funds."). Additionally, the Plaintiffs' retention agreement provides for an
 50 award of current rates.
 51

⁵ Paralegal fees are properly recoverable with an attorneys' fee award under § 1988. *Perez v. Cate*, 632
 F.3d 553, 556-57 (9th Cir. 2011).

1 **1. The Amount of Time Expended Was Reasonable**

2 In determining “reasonableness,” the success of the litigation is the critical factor:

3
4 “Where a plaintiff has obtained excellent results, his attorney should recover a fully
5 compensatory fee. Normally this will encompass all hours reasonably expended on the litigation,
6 and indeed in some cases of exceptional success an enhanced award may be justified.”

7
8 *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). In this case, Plaintiffs have achieved just such
9 “excellent results.” They are entitled to a fully compensatory fee.

10 Detailed descriptions of the time spent by Plaintiffs’ attorneys in the varying stages of
11 this litigation are set forth in counsel’s declarations and time records. Briefly summarized, the
12 work done at the various stages of this litigation includes:

13
14 **1. Pre-filing Information Gathering and Investigation** (October 21, 2008 to
15 November 25, 2009): Disability Rights Washington conducted the majority of the factual
16 background research, investigation and pre-filing case development necessary for organization of
17 the class and filing of the Complaint. These efforts began with investigating an allegation that
18 numerous children and youth were suffering harm from having to wait many months for
19 necessary mental health treatment delivered through the Washington State Children’s Long-term
20 Inpatient Psychiatric (CLIP) program. (Carlson Decl. ¶¶ 24.) As the designated Protection and
21 Advocacy System for the State of Washington, DRW was able to conduct this investigation
22 within a relatively quick timeframe without the tools of formal discovery. (*Id.*) DRW attorneys
23 collected information on how the current system works, what types of programs were successful
24 and in what ways the current system failed to meet the needs of youth covered by Medicaid.
25 DRW met with many youth and their families who were struggling to access critical treatment.
26 (Carlson Decl. ¶ 25.)

27
28 DRW attorneys attended and observed existing treatment team and wraparound planning
29 meetings, interviewed therapists and social workers, and reviewed individual treatment records
30 for dozens of youth. Based on these investigations, DRW identified individual youth who could
31 ultimately serve as class representatives in this litigation if necessary. (Carlson Decl. ¶ 27.)

1 In March 2009, DRW partnered with Perkins Coie LLP in order to take advantage of
 2 Perkins Coie's resources in litigating a case of this magnitude. DRW and Perkins Coie made a
 3 comprehensive request for public records about the children's mental health system in
 4 Washington using the Washington Public Records Act. DRW and Perkins Coie received over
 5 45,000 pages of documents over the next three months, which DRW and Perkins Coie reviewed
 6 and analyzed. Perkins Coie assisted DRW in managing the responses received by DRW,
 7 developing case strategy, researching and reviewing case background materials, and identifying
 8 various legal issues prior to filing the Complaint. (Carlson Decl. ¶ 27.)
 9

10 During this same time period, NCYL and NHeLP contributed their past expertise in
 11 reforming child-serving systems and litigating claims under the Medicaid Act. NCYL engaged
 12 numerous experts to develop information regarding Washington's Medicaid system and NHeLP
 13 helped with legal research and expertise gained from representing classes of litigants seeking to
 14 enforce their rights under the Medicaid Act. (Lewis Decl. ¶¶ 8-9.) Both groups brought to bear
 15 their experience and knowledge of reforming children's mental health care systems in other
 16 jurisdictions, including in a recent landmark case in California. (Gardner Decl. ¶ 8.)
 17

18 Time spent in the above-described phase of the litigation is as follows:
 19

20 Law Firm	21 Hours Recorded
22 Disability Rights Washington	23 947.3
24 Perkins Coie LLP	25 384.4
26 National Center for Youth Law	27 193.9
28 National Health Law Program	29 8.6
30 Total	31 1,534.2

32 **2. Research and Filing of Complaint (March 2009 to November 2009):**

33 In October 2009, DRW and Perkins Coie began drafting the complaint. The drafting
 34 responsibilities were divided between Perkins Coie's and DRW's offices so that DRW would be
 35 responsible for synthesizing facts regarding the individually named plaintiffs, with which DRW
 36 was most familiar, and Perkins Coie would be responsible for drafting the systemic and legal
 37 claims. DRW worked with numerous youth and their families to settle on the final named
 38 plaintiffs who were representative of the problems faced by youth around the state. (Carlson
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51

1 Decl. ¶ 41.) Perkins Coie attorneys took the lead in researching and identifying the various legal
 2 issues in preparation for filing the Complaint (including, *inter alia*, preliminary research
 3 regarding class certification under Rule 23(b)(2); subdivision of class; venue where state officials
 4 reside outside district; nexus requirements and intra-district transfer; public records litigation
 5 issues; retention of experts and ex parte contact with corporate consultants within government;
 6 work product and non-testifying experts; preliminary injunctions prior to class certification;
 7 EPSDT federal statutory requirements; guardianship and next friend pleading requirements; Ex
 8 Parte Young issues; and discovery under Rule 23(b)(2) actions). (Foster Decl. ¶ 10.) Perkins
 9 Coie and DRW shared responsibility in drafting and filing the Complaint and related case-
 10 initiation filings. (Carlson Decl. ¶ 41.) Time spent in the above-described phase of the litigation
 11 is as follows:

Law Firm	Hours Recorded
Disability Rights Washington	581.9
Perkins Coie LLP	127.2
National Center for Youth Law	15.8
Total	724.9

22
 23
 24
 25
 26
 27
 28 **3. Preliminary Case Management (November 2009 to April 2010):** Following the
 29 filing of the complaint, Perkins Coie took the lead in the preliminary case management,
 30 including developing case strategy, drafting and filing the Joint Status Report, Scheduling
 31 Conference and filing the Protective Order. DRW attorney time in this area included connecting
 32 with class members and defendants to communicate about the latest developments in the case
 33 and in their respective situations. (Carlson Decl. ¶ 44.)

34
 35
 36
 37
 38
 39 DRW attorneys met with the named plaintiffs and a number of other putative class
 40 member youth and their families or caregivers to draft declarations for future filing that
 41 documented their experiences in trying to access necessary mental health services. DRW
 42 attorneys also worked with clinicians and children's advocates from across the state to document
 43 their observations of the current system's performance in providing community mental health
 44 services to children and youth. (*Id.*) To ensure the confidentiality of the named plaintiffs and
 45 putative class members in future filings with the court, DRW worked on a joint motion for a
 46
 47
 48
 49
 50
 51

1 protective order, filed on April 10, 2010. (Carlson Decl. ¶ 45.) Time spent in the above-
 2 described phase of the litigation is as follows:
 3

4 Law Firm	Hours Recorded
5 Disability Rights Washington	184.8
6 Perkins Coie LLP	164.6
7 National Center for Youth Law	21.3
8 National Health Law Program	5.4
9 Total	376.1

10
 11 **4. Develop Facts for, Draft and Negotiate Class Action Certification (November**
 12 **2009 to July 2010):** DRW coordinated co-counsel efforts in the process of obtaining Class
 13 Certification. Perkins Coie took the lead in drafting and filing documents under seal, the
 14 preparation of declarations for class representatives, negotiation with Defendants' counsel for
 15 stipulations regarding the class definition, and extensive research, drafting, and filing of the
 16 motion for class certification both prior to and after the State's agreement to stipulate to class
 17 certification. (Carlson Decl. ¶ 45.) DRW attorneys spent their time assisting in that effort by
 18 communicating with class members, drafting necessary fact sections for filing and strategizing
 19 about negotiations. DRW also participated in negotiations with the Defendant. DRW gathered
 20 examples from other class action Medicaid and ADA lawsuits, reviewed class definitions from
 21 Washington cases and participated in the negotiations with the State. (*Id.*) Those negotiations
 22 ultimately led to the Stipulation Regarding Plaintiffs' Motion for Class Certification filed with
 23 this Court. (*Id.*) The Court entered its Order for Class Certification on July 23, 2010. Time
 24 spent in the above-described phase of the litigation is as follows:
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37

38 Law Firm	Hours Recorded
39 Disability Rights Washington	637.6
40 Perkins Coie LLP	237.4
41 National Center for Youth Law	64.2
42 Total	939.2

43
 44 **5. Preliminary Discovery (December 2009 to November 2010):** Perkins drafted
 45 written discovery in the form of requests for admission, interrogatories and requests for
 46 production and assisted DRW in responding to Defendants' written discovery. (Foster Decl. ¶
 47 13.) DRW attorneys also took the depositions of three of Defendant's mental health
 48
 49
 50
 51

1 administrators. All three of these depositions were necessary to obtain testimony to support
 2 Plaintiffs' Medicaid and ADA claims. (Carlson Decl. ¶ 51.) NCYL attorneys spent significant
 3 amounts of time collecting documents and reviewing discovery produced by Defendants and
 4 third parties. The discovery obtained was instrumental in supporting the claims in Plaintiffs'
 5 complaint and in settlement strategy and negotiations. (Welch Decl. ¶ 11.) Time spent in the
 6 above-described phase of the litigation is as follows:
 7
 8
 9
 10
 11

Law Firm	Hours Recorded
Disability Rights Washington	529.7
Perkins Coie LLP	397.2
National Center for Youth Law	415.6
Total	1,342.5

12
 13
 14
 15
 16
 17
 18 **6. Expert Witness Coordination (March 2010 to November 2010):** DRW and
 19 NCYL attorneys took the lead in obtaining and working with experts able to describe the specific
 20 services that Plaintiffs need, and to map out how to obtain those services within the context of
 21 Washington's Medicaid system. (Welch Decl. ¶ 11.) This work included preparing declarations
 22 and expert opinions for purposes of preparing to file a preliminary injunction motion and, later,
 23 to inform the parties' mediation efforts. (*Id.*) DRW attorneys worked with experts to conduct
 24 onsite interviews with parent groups, probation officers, social workers, clinicians, and youth
 25 across the state. (Carlson Decl. ¶ 27.) After agreement and approval of the Interim Agreement,
 26 NCYL attorneys worked closely with these experts to ensure proper implementation of the
 27 Interim Agreement. (Welch Decl. ¶ 13.) Time spent in the above-described phase of the
 28 litigation is as follows:
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38

Law Firm	Hours Recorded
Disability Rights Washington	226.1
Perkins Coie LLP	13.3
National Center for Youth Law	188.1
Total	427.5

39
 40
 41
 42
 43
 44
 45 **7. Research and Draft Preliminary Injunction (March 2010 to November 2010):**
 46 During the course of discovery and working closely with experts, DRW drafted briefs and
 47 supporting declarations synthesizing the evidence obtained through depositions and written
 48 discovery. The briefing also analyzed how this evidence supported Plaintiffs' claims for
 49
 50
 51

1 declaratory and injunctive relief. Plaintiffs’ counsel planned to use these briefs and declarations
 2 in support of a motion for preliminary injunctive relief. The Defendants’ discovery obligations,
 3 the threat of a preliminary injunction and preparedness by the Plaintiffs to do so provided
 4 powerful leverage during the negotiations that followed. (Carlson Decl. ¶ 55.) Indeed, prior to
 5 filing any preliminary motions, the parties agreed that, given the legal arguments and litigation
 6 engaged in up to that point, the parties’ success in reaching an agreed class definition, and
 7 apparent mutual desire to improve mental health services for children, early negotiations rather
 8 than litigation were worth pursuing. (*Id.*) Time spent in the above-described phase of the
 9 litigation is as follows:

Law Firm	Hours Recorded
Disability Rights Washington	170.1
Perkins Coie LLP	33.1
National Center for Youth Law	18.8
National Health Law Program	10.6
Total	232.6

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25 **8. Interim Agreement Planning and Negotiations (February 17, 2011 to March 7,**
 26 **2012):** DRW and NCYL attorneys shared primary responsibility during the course of the
 27 negotiations leading to the Interim Agreement, each devoting well over a thousand hours to such
 28 efforts. These negotiation sessions were intended to settle the entire case, but ended up resulting
 29 in the parties’ Interim Agreement approved by this Court on March 7, 2012. (Welch Decl. ¶ 13.)
 30 Perkins Coie initially participated in settlement planning and negotiation but withdrew from the
 31 process after the development of a framework for future negotiations and settlement so as to
 32 avoid duplication of resources. These discussions led the parties to establish important common
 33 ground regarding mental health services to class members. Key products of these negotiations
 34 included core program principles, creation of a population proxy, an understanding of the State’s
 35 array of relevant mental health services, and plans for measuring data and quality assurance.
 36 This first round of negotiations resulted in the filing of the Interim Agreement, which NCYL
 37 took the lead in drafting. (Welch Decl. ¶ 12.) This agreement formed the basis for the reforms
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51

1 put forward in the proposed Final Settlement Agreement. Time spent in the above-described
 2 phase of the litigation is as follows:
 3

4 Law Firm	Hours Recorded
5 Disability Rights Washington	1,101.7
6 Perkins Coie LLP	176.9
7 National Center for Youth Law	1,553.2
8 National Health Law Program	93.9
9 Total	2,925.7

10
 11 **9. Motion in Support of Interim Agreement and Implementation of Same (to**
 12 **March 7, 2012):** Once the Interim Agreement was negotiated, DRW contacted the representative
 13 Plaintiffs and drafted a presentation to be used to explain the terms of the Interim Agreement
 14 when meeting with class members, their families and other interested stakeholders. DRW and
 15 NCYL also drafted a motion and supporting declarations which were filed with the Court on
 16 March 6, 2012 and approved in an order issued by this court the following day, March 7, 2012.
 17 (Carlson Decl. ¶¶ 69-70.)
 18
 19
 20
 21
 22

23
 24
 25 Over the period March 2012 to June 2013, the state worked to meet its commitments
 26 under the Interim Agreement. For the balance of 2012, the parties continued to communicate for
 27 the purposes of monitoring progress on these commitments. NCYL monitored and assessed the
 28 State’s progress, made recommendations on how to solve problems as they arose, and spotted
 29 issues that needed to be addressed in implementation or as part of the anticipated second round
 30 of negotiations. (Gardner Decl. ¶ 18.) DRW regularly met with Defendants and co-counsel to
 31 receive updates on the planning and development steps necessary for Defendants to take in order
 32 to meet their obligations in the Interim Agreement. (Carlson Decl. ¶ 72.) Time spent in the
 33 above-described phase of the litigation is as follows:
 34
 35
 36
 37
 38
 39
 40
 41

42 Law Firm	Hours Recorded
43 Disability Rights Washington	186.6
44 Perkins Coie LLP	14.8
45 National Center for Youth Law	133.7
46 Young Minds Advocacy Project	25.4
47 Total	360.5

10. Final Settlement and Motions in Support of Same (March 8, 2012 to Present):

With the exception of attorneys from Perkins Coie, all of Plaintiffs’ counsel participated in negotiations of the Final Settlement. The parties began meeting to negotiate a final resolution to the case on February 27, 2013. Over the course of the next five months the parties met face-to-face in Tacoma eight times over a total of eleven days. (Gardner Decl. ¶ 20.) The parties exchanged draft settlement documents between every meeting, including numerous iterations of what became the finalized appendices to the agreement, explaining in detail various aspects of the proposed new children’s mental health service system. (Gardner Decl. ¶ 77.) After the final face-to-face meeting on June 26th, the parties continued to discuss the agreement almost daily by conference call for an additional few weeks through mid-July, when the negotiators reached a tentative agreement. Counsel for Young Minds Advocacy Project—Patrick Gardner, who had left NCYL to begin work at Young Minds in July 2012—led efforts to identify remaining challenges and ensure that all of the necessary elements for successful reform were addressed. (Gardner Decl. ¶ 20.)

Once the parties agreed to a proposed settlement, DRW worked with State Defendants to draft the proposed Notice to the class and the accompanying Notice Plan, including working with Defendants on a mutually agreeable method of distributing notice. NCYL took the lead in drafting the motion for preliminary approval of the Final Settlement, including drafting the proposed order and coordinating supporting declarations. All counsel participated in the coordination of the case resolution and post-settlement management. (Gardner Decl. ¶ 79.)

Time spent in the above-described phase of the litigation is as follows:

Law Firm	Hours Recorded
Disability Rights Washington	636.2
Perkins Coie LLP	23.6
National Center for Youth Law	464.5
National Health Law Program	166.2
Young Minds Advocacy Project	607.6
Total	1,898.1

11. Attorneys’ Fees Negotiations and Motion (February 2013 to July 2013):

Perkins Coie took the lead in researching and drafting the motion for attorneys’ fees, as well as

1 compiling counsels' costs and disbursement and fee logs. Plaintiffs originally researched,
 2 drafted, and intended to file a motion for recovery of interim attorneys' fees after agreement and
 3 approval of the Interim Agreement. However, as implementation of the Interim Agreement
 4 progressed and the Final Settlement Agreement became likely, Plaintiffs' counsel ultimately
 5 concluded that a single motion upon approval of the Final Settlement—reflecting the combined
 6 fee awards agreed upon by the parties during the Interim and Final Settlement negotiation—was
 7 a more efficient use of resources. (Foster Decl. ¶ 16.) DRW, Young Minds, and NCYL all
 8 contributed to the Fee Motion by compiling fee records, reviewing and exercising discretion in
 9 submission of time recorded, and preparing declarations documenting the work performed
 10 throughout this litigation. In addition, Plaintiffs' expert Richard Pearl, a nationally recognized
 11 expert on attorneys' fee issues, provided invaluable advice and consulting on the motion. Time
 12 spent in the above-described phase of the litigation is as follows:

Law Firm	Hours Recorded
Disability Rights Washington	145.3
Perkins Coie LLP	290.4
National Center for Youth Law	101.9
Young Minds Advocacy Project	43.2
Total	580.8

12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51

12. Ongoing Named Class Member coordination and Fact Development (November 2008 through Present): Over the past five years, DRW held primary responsibility for maintaining and requesting individual plaintiff records and communicating with the named plaintiffs. DRW attorneys worked with individual plaintiffs to gather records in response to Defendants' discovery requests. (Carlson Decl. ¶ 86.) To maintain updated information about the dynamic needs and circumstances of the named plaintiffs and other class members, DRW maintained contact with the youth, requested updated treatment records, and continued to gather information from and consult with the youths' treating clinicians, teachers, parents, public defendants, and other supports. (*Id.*)

As various individual needs were apparent from DRW's ongoing investigations, DRW provided ongoing legal advice to the named plaintiffs and other class members. When

1 necessary, DRW also provided individual advocacy to mitigate the harm present when a named
 2 plaintiff or class member experienced a crisis or extreme barrier to necessary treatment. These
 3 activities were not only part of DRW's representation, but also served as basis for counsel's
 4 understanding of the systemic remedies needed to ensure future access to intensive mental health
 5 services through this class action litigation. (Carlson Decl. ¶ 87.)
 6
 7
 8
 9

10 In order to maximize efficiency, DRW assigned a specific staff to be the lead contact for
 11 each of the named plaintiffs. This system prevented duplication of efforts and made client
 12 communication more efficient. To ensure DRW was not charging for duplicative or unnecessary
 13 work, DRW attorneys exercised considerable billing judgment in omitting charges for the time
 14 spent on internal briefings not essential for litigation. (Carlson Decl. ¶ 88.) Time spent in the
 15 above-described phase of the litigation is as follows:
 16
 17
 18
 19
 20

Law Firm	Hours Recorded
Disability Rights Washington	1,113.7
Young Minds Advocacy Project	1.8
Total	1,113.7

21
 22
 23
 24
 25
 26
 27 In sum, the combined efforts of Plaintiffs' counsel throughout this litigation, while
 28 substantial, reflect the legal and factual complexity of institutional reform cases like this one.
 29 For example, a nearly identical class action was recently brought against the State of
 30 Massachusetts for violations of the Medicaid Act's EPSDT provisions. *Rosie D. ex rel. John*
 31 *D. v. Patrick*, 593 F. Supp. 2d 325 (D. Mass. 2009). That litigation spanned six years and
 32 ultimately concluded with a jury trial. The district court noted that in all his years as a judge, the
 33 lawsuit was "one of the two or three most legally and factually complicated" he had presided
 34 over. *Id.* at 327. In reviewing the application for attorneys' fees, the district court noted that
 35 Plaintiffs' attorneys had voluntarily written off over 5,200 hours of legal time—an 18.5%
 36 discount—and held that the remaining 22,900 hours claimed were reasonable. *Id.* at 332-33.
 37
 38
 39
 40
 41
 42
 43
 44
 45

46 The time spent by Plaintiffs' attorneys here, while significantly less than *Rosie D.*,
 47 similarly reflects the scope and complexity of the factual and legal issues inherent in EPSDT and
 48 class action litigation. Indeed, the task undertaken by the parties in mediating this action
 49
 50
 51

1 involved not merely drafting an ordinary settlement, but quite literally fashioning a reform of
2 Washington’s Medicaid system. And in contrast to the 18.5% voluntary reduction of the lodestar
3 taking in *Rosie D.*, the Plaintiffs here are voluntarily taking a 40% lodestar.
4
5

6 **2. The Hourly Rates Are Reasonable**

7
8 “The statute and legislative history establish that ‘reasonable fees’ under § 1988 are to be
9 calculated according to the prevailing market rates in the relevant community, regardless of
10 whether plaintiff is represented by private or nonprofit counsel.” *Blum v. Stenson*, 465 U.S. 886,
11 895 (1984). “In determining a reasonable hourly rate, the district court should be guided by the
12 rate prevailing in the community for similar work performed by attorneys of comparable skill,
13 experience, and reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir.
14 1986). Under this standard, the hourly rates requested are reasonable if they are “in line with
15 those prevailing in the community for similar services by lawyers of reasonably comparable
16 skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. at 896 n.11.
17
18
19
20
21
22
23
24

25 Prevailing market rates are determined by looking toward the ordinary hourly rates of the
26 attorneys as well as private law firms in the market. Rates should not be reduced merely because
27 the work performed is *pro bono*, or by a non-profit organization or legal aid society. *See Rosie*
28 *D. ex rel. John D. v. Patrick*, 593 F. Supp. 2d 325, 330 (D. Mass. 2009) (“[A]n attorney should
29 not expect to receive less for doing important work on behalf of vulnerable plaintiffs in a piece
30 of hotly contested, complex class litigation. There is no ‘good guy’ or ‘white hat’ fee discount.
31 Thus, as a threshold matter, the court might well simply start, with regard to these seven
32 individuals at least, by approving their well-established, customary hourly rates.”). *See also*
33 *Runyon v. Fasi*, 762 F. Supp. 280, 286 (D. Haw. 1991) (“In setting attorney's fees in civil rights
34 cases, the fact that the prevailing party was represented by a public service firm or association
35 funded by public funds is irrelevant.”).
36
37
38
39
40
41
42
43
44
45

46 In this case, the hourly rates requested by Plaintiffs’ counsel are clearly “in line” with the
47 prevailing market rates in this community. Even before taking into account the 40% reduction in
48 fees sought, the total average rate for all time recorded—calculated by dividing the total
49
50
51

1 attorneys' fees incurred by the total number of hours recorded—amounts to \$416 per hour.
2
3 Taking into account the 40% reduction Plaintiffs have agreed to take, the average hourly rate
4
5 amounts to \$249 per hour.

6
7 More specifically, the hourly rates charged by attorneys for Disability Rights Washington
8
9 and Perkins Coie are well in line with the range of rates charged in Seattle's legal market for
10
11 similarly complex work. (Foster Decl. ¶ 18.); *see also, e.g., Pelletz v. Weyerhaeuser Co.*, 592 F.
12
13 Supp. 2d 1322, 1326-27 (W.D. Wash. 2009) (finding rates charged by two Seattle law firms
14
15 ranging from \$415 to \$760 were reasonable for the Seattle market in a class action litigation
16
17 lawsuit). Likewise, even though higher San Francisco Bay Area and Los Angeles rates might
18
19 have been requested (*see, e.g., Guam Soc. Of Obstetricians & Gynecologists v. Ada*, 100 F.3d
20
21 691, 702 (9th Cir. 1996)), the rates charged by NCYL, NHeLP, and YMAP are also in line with
22
23 Seattle rates. *Id.*

24
25 In sum, Plaintiffs' attorneys have expended over 12,000 hours in this litigation through
26
27 July 31, 2013. These hours, multiplied by the respective hourly rates of Plaintiffs' attorneys and
28
29 paralegals, equals \$5,176,053. Nevertheless, Plaintiffs and Defendants have agreed that
30
31 Plaintiffs will only receive a discounted fee award in the amount of \$3,100,000 that encompasses
32
33 all hours logged and out-of-pocket expenses incurred by Plaintiffs' counsel through August 31,
34
35 2013. The Parties submit that this substantial reduction in the lodestar is a compelling indication
36
37 that the fee award sought is reasonable. Four of the five firms are public interest entities whose
38
39 fees will be used to pursue legal advocacy and provide legal services to low income and
40
41 disadvantaged clients. Perkins Coie's fees are being contributed to a pro bono fund pursuant to
42
43 the Pro Bono Institutes' guidelines for pro bono representation. (Foster Decl. ¶ 22.) Taken
44
45 together with the outstanding results achieved and counsel's ability to accomplish these results
46
47 without a full-blown trial or more extended litigation, Plaintiffs respectfully submit that the fee
48
49 agreed upon by the parties is fair and reasonable and should be approved by this Court.
50
51

C. Litigation Costs and Expert Fees Are Recoverable

Plaintiffs’ counsel also have incurred documented out-of-pocket litigation expenses and disbursements in the amount of \$222,593.24 incurred through August 31, 2013. Detailed itemizations of such costs incurred by each firm are attached as Exhibits to the Declarations of David Carlson, Susan Foster, Leecia Welch, Patrick Gardner, and Kimberly Lewis.⁶ Plaintiffs are not seeking separate reimbursement for such costs, but instead will pay for them out of the attorneys’ fee award of \$3.1 million, if approved by the Court.

Despite the fact that Plaintiffs are not seeking a separate award for costs and expert fees, it is worth noting that these litigation fees and costs, which are ordinarily charged to fee-paying clients, are recoverable as part of the attorneys’ fee award. *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Woods v. Carey*, 09-16113, 2013 WL 3722083, at *1 n.2 (9th Cir. July 17, 2013) (“Expenses normally charged to fee-paying clients include ‘photocopying, paralegal expenses, and travel and telephone costs.’”) (quoting *Thornberry v. Delta Air Lines Inc.*, 676 F.2d 1240, 1244 (9th Cir.1982)).

Additionally, because Plaintiffs’ are prevailing parties in this civil rights and disability discrimination lawsuit, Plaintiffs would also ordinarily be entitled to recover expert fees. *Lovell v. Chandler*, 303 F.3d 1039, 1058-59 (9th Cir. 2002) (holding that expert fees are recoverable under ADA fee-shifting statute, 42 U.S.C. § 12205). The total litigation expenses incurred by Plaintiffs’ counsel through August 31, 2013 is summarized as follows:

Costs and Litigation Expenses	
Organization	Total Amount
National Center for Youth Law	\$34,338.04
Perkins Coie	\$128,320.32
National Health Law Program	\$1,159.68
Young Minds Advocacy Project	\$8,105.06
Disability Rights Washington	\$50,670.14
Grand Total to August 31, 2013	\$222,593.24

The lodestar calculation of the fees combined with the litigation expenses incurred is \$5,398,646.24. The \$3.1 million total award sought by Plaintiffs and agreed upon by the

⁶ Such costs and expenses include, inter alia, photocopying, courier/process server fees, filing fees, as well as travel, per diem meals, and lodging for out-of-town counsel and experts.

1 Defendants therefore represents a 43% reduction in the amount of fees and costs to which
 2 Plaintiffs may have been entitled.
 3

4
 5 **D. Fee Awards Are Properly Made Payable to Class Counsel Pursuant to Retainer**
 6 **Agreement**

7 Although named Plaintiffs are the “prevailing parties” entitled to an award of attorneys’
 8 fees, the Court may properly allow Defendants to make the fee award payable to class counsel
 9 where, as here, a valid retainer agreement has assigned all awards of attorneys’ fees to class
 10 counsel.
 11

12 The right to attorneys’ fees under 42 U.S.C. § 1988(b) accrues to the party rather than his
 13 or her counsel. *Venegas v. Mitchell*, 495 U.S. 82, 87-88 (1990). However, courts have
 14 consistently recognized that assignment of § 1988(b) fees is proper between a party and her
 15 attorney pursuant to a retention agreement. *See Evans v. Jeff D.*, 475 U.S. 717, 730-31 (1986)
 16 (noting in *dicta* that in enacting 42 U.S.C. § 1988, Congress did not “legislate[] against
 17 assignment of [the right to attorneys’ fees] to an attorney.”).
 18

19 Moreover, the Supreme Court’s “most recent cases applying § 1988(b)’s ‘prevailing
 20 party’ language recognize the practical reality that attorneys are the beneficiaries and, almost
 21 always, the ultimate recipients of the fees that the statute awards to ‘prevailing part[ies].’”
 22 *Astrue v. Ratliff*, 560 U.S. 586, 130 S. Ct. 2521, 2529 (2010) (noting that such “cases emphasize
 23 the nonstatutory (contractual and other assignment-based) rights that typically confer upon the
 24 attorney the entitlement to payment of the fees award the statute confers on the prevailing
 25 litigant.”); *see also Gilbrook v. City of Westminster*, 177 F.3d 839, 874 (9th Cir. 1999) (“[C]ivil
 26 rights lawyers can protect their interest in a fee award simply by executing contracts.”).⁷
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42

43 ⁷ Thus, where a plaintiff has assigned her statutory attorneys’ fees to her attorneys, “the only ground for the
 44 district court’s insisting on making the award to the plaintiff is that the plaintiff has [offsetting debts to the
 45 government] that may be prior to what she owes her lawyer.” *Mathews-Sheets v. Astrue*, 653 F.3d 560, 565-66 (7th
 46 Cir. 2011) (further noting that “[t]here is no indication of [such debts] in this case, so to ignore the assignment and
 47 order the fee paid to her would just create a potential collection problem for the lawyer.”). It is therefore a routine
 48 practice to pay the fee award directly to the prevailing party’s attorney where the prevailing party has assigned such
 49 fees to her attorney. *See, e.g., Gillman v. Astrue*, 829 F. Supp. 2d 999, 1009 (W.D. Wash. 2011) (Zilly, J.) (If it is
 50 determined that “Plaintiff’s award is not subject to any offset, the Commissioner shall pay and deliver the above
 51 award directly to Plaintiff’s counsel . . . based on Plaintiff’s assignment of the award.”).

1 Indeed, the Ninth Circuit has long held that such an award may be assigned to the
2 prevailing party's attorney for direct payment even in the context of class actions. In *Dennis v.*
3 *Chang*, 611 F.2d 1302 (9th Cir. 1980), four class action lawsuits were brought against Hawaii's
4 Department of Social Services and Housing for violations of equal protection and Hawaii's
5 Medicaid programs. After prevailing, the plaintiffs in all four cases sought attorneys' fees under
6 § 1988(b), which the defendant opposed on grounds that the plaintiffs were represented by
7 publicly funded legal services organizations. *Id.* at 1305. The Ninth Circuit disagreed, noting
8 the importance of fee awards for legal services organizations that do not charge their clients in
9 order to encourage such organizations "to expend [their] limited resources in litigation aimed at
10 enforcing the civil rights statutes." *Id.* at 1306.

11 In confirming the right to fees, the *Chang* court observed that the district court had
12 awarded the attorneys' fees to plaintiffs, which "[a]lthough consistent with the statutory
13 language authorizing a fee award to the 'prevailing party,' to avoid a windfall the award should
14 be made to the organization that provided the legal services." *Id.* at 1309.⁸

15 In accord with *Chang*, other courts agree that assignment of such fees is properly made
16 by the named plaintiffs who, unlike absent class members, may incur responsibility for payment
17 of costs and attorneys' fees.⁹ See, e.g. *Hvorcik v. Sheahan*, 1994 WL 521069 (N.D. Ill. Sept. 22,
18 1994). Just as in *Chang*, Plaintiffs in this class action have assigned their statutory right to
19 attorneys' fees to class counsel through Retainer Agreements. All named Plaintiffs have
20 executed valid assignments of any attorney fee award. (Carlson Decl. ¶ 98.) Payment of the fee
21 award is thus properly made directly to class counsel and will avoid problems that would be

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

⁸ Four out of five of Plaintiffs' law firms here are non-profit firms that do not charge fees to their clients.

⁹ See Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 16.1 (4th ed. 2002) ("Absent class members are not parties for the purposes of filing pleadings or meeting costs."); see also *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985) ("[A]bsent plaintiff class members are not subject to other burdens imposed upon defendants. They need not hire counsel or appear. They are almost never subject to counterclaims or cross-claims, or liability for fees or costs.").

1 created by payment of attorneys’ fees directly to plaintiffs, whom are seeking wholly equitable
2 relief and have not incurred attorneys’ fees.¹⁰
3

4 **E. Notice of Fee Award Under Rule 23(h)**
5

6 Notice of a motion for attorneys’ fees must be “directed to class members in a reasonable
7 manner.” Fed. R. Civ. P. 23(h)(1). The form and extent of the notice to be directed is within the
8 court’s discretion. *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 438 (2d Cir. 2007).
9

10 Plaintiffs’ proposed Notice to class members informs class members that:
11

12 Subject to Court approval, Defendants have agreed to pay
13 Plaintiffs’ attorneys Three Million One Hundred Thousand Dollars
14 (\$3,100,000.00) in attorneys’ fees and costs. Detailed information
15 about the work Plaintiffs’ attorneys did and the costs paid can be
16 found in the Memorandum in Support of Fees and Costs at [listing
17 DRW’s website].
18
19
20

21 Proposed Class Notice, ECF No. 119-2.
22

23 The proposed Notice to class members was approved by this Court’s September 27, 2013
24 Order. ECF No. 125 (“The Notice also informs class members about the anticipated motion for
25 attorneys’ fees and costs and the total amount that will be requested, and it provides class
26 members a method for obtaining more details.”)
27
28
29

30 **III. CONCLUSION**
31

32 For the reasons set forth above, Plaintiffs respectfully request that the Court approve the
33 agreed upon fee award of \$3,100,000 to Plaintiffs and to permit the payment of such award
34 directly to the Plaintiffs’ counsel pursuant to Plaintiffs’ assignment of same.
35
36
37
38
39
40
41
42
43
44
45
46

47 ¹⁰ *United States ex rel. Virani v. Jerry M. Lewis Truck Parts & Equip., Inc.*, 89 F.3d 574, 577 (9th Cir. 1996)
48 (“[W]eighty authority demonstrates that the client himself is not entitled to keep the fees which are measured by and
49 paid on account of the attorneys’ services.”); *Elusta v. City of Chicago*, 696 F.3d 690, 694 (7th Cir. 2012)
50 (upholding district court’s order that prevailing plaintiff must pay all statutory attorneys’ fees that had been awarded
51 to plaintiff to plaintiff’s attorneys on grounds of *quantum meruit* for attorneys’ services rendered).

FOR PLAINTIFFS:

s/ David Carlson

s/ Susan Kas

David Carlson, WSBA No. 35767

Susan Kas, WSBA No. 36592

DISABILITY RIGHTS WASHINGTON

315 5th Avenue South, Suite 850

Seattle, WA 98104

Telephone: (206) 324-1521

Facsimile: (206) 957-0729

Email: davide@dr-wa.org

susank@dr-wa.org

s/ Susan E. Foster

s/ Frederick B. Rivera

s/ Travis A. Exstrom

s/ Austin Rainwater

Susan E. Foster, WSBA No. 18030

Frederick B. Rivera, WSBA No. 23008

Travis A. Exstrom, WSBA No. 39309

Austin Rainwater, WSBA No. 41904

PERKINS COIE LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: (206) 359.8000

Facsimile: (206) 359.9000

Email: SFoster@perkinscoie.com

FRivera@perkinscoie.com

TExstrom@perkinscoie.com

ARainwater@perkinscoie.com

s/ Leecia Welch

s/ Erin Liotta

Leecia Welch, WSBA No. 26590

Erin Liotta, CB No. 278949

NATIONAL CENTER FOR YOUTH LAW

405 14th Street, 15th Floor

Oakland, CA 94612

Telephone: (510) 835-8098

Facsimile: (510) 835-8099

Email: lwelch@youthlaw.org

eliotta@youthlaw.org

s/ Kimberly Lewis

s/ Jane Perkins

Kimberly Lewis, CB No. 144879

Jane Perkins, SBN 104784

NATIONAL HEALTH LAW PROGRAM

3701 Wilshire Blvd., Suite #750

Los Angeles, CA 90010

Telephone: (310) 204-6010

Facsimile: (213) 368-0774

Email: lewis@healthlaw.org

perkins@healthlaw.org

s/ Patrick Gardner

s/ Wesley Sheffield

Patrick Gardner, CB No. 208119

Wesley Sheffield, CB No. 287940

YOUNG MINDS ADVOCACY PROJECT

115 Haight Street

Menlo Park, CA 92025

Telephone: (650) 494-4930

Email: patrick@youngmindsadvocacy.org

wsheffield@youthmindsadvocacy.org

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: John McIlhenny Jr. (JohnM5@atg.wa.gov), Bill G. Clark (BillC2@atg.wa.gov), Eric Nelson (EricN1@atg.wa.gov).

DATED this 10th day of October, 2013.

s/Tabitha Moe

Tabitha Moe, Legal Secretary
Perkins Coie LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51