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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAMELLA BURT, LINDA
CROSKREY, MARY GONZALES,
ET AL.,

No. C-73-0906 MHP (JCS)

Plaintiffs,
v.
COUNTY OF CONTRA COSTA, ET AL.,
Defendants.

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
AWARD OF REASONABLE
ATTORNEYS' FEES AND COSTS**

Plaintiff's Motion For Award Of Reasonable Attorneys' Fees And Costs ("the Motion") was referred to the undersigned United States Magistrate Judge for final disposition.¹ Oral arguments were heard on Friday, April 13, 2001, at 9:30 a.m. Following oral argument, supplemental briefs and declarations were filed in May, June, and July of 2001. For the reasons stated below, the Court GRANTS in part Plaintiffs' Motion and awards \$89,042.50 in attorneys' and expert fees and \$352.73 in costs.

I. INTRODUCTION

Plaintiffs seek reasonable attorneys' fees and costs for monitoring and enforcing a 1975 consent decree ("the Consent Decree"), the terms of which were negotiated by Contra Costa County ("the County") and Plaintiffs in settlement of two consolidated class action lawsuits. One of these lawsuits was brought under Title VII of the Civil Rights Act of 1964. The other was brought under 42 U.S.C. §§ 1981 and 1983. Plaintiffs' current counsel, the firm of Price and Associates, substituted in as counsel of record in

¹ Pursuant to 28 U.S.C. § 636(c), all parties consented to a referral of the Motion for final disposition by a Magistrate Judge.

1 the fall of 1999. Price and Associates now seek fees and costs for work performed over the last two
2 years, both by Price and Associates and by an outside consultant, Crawley Consulting, which Plaintiffs
3 maintain was necessary to monitor and enforce the terms of the Consent Decree.

4 Defendants assert that Plaintiffs are not entitled to attorneys’ fees and costs because the statutes
5 under which the actions were brought did not provide for attorneys’ fees or expert fees at the time the
6 Consent Decree was entered. Defendants further argue that the Consent Decree itself does not provide for
7 payment of attorneys’ fees and costs associated with ongoing monitoring and enforcement and that
8 therefore, there is no basis for awarding attorneys fees and costs. Finally, Defendants argue that even if
9 attorneys’ fees are awarded, the amount sought by Plaintiffs should be substantially reduced.

10
11 **II. BACKGROUND**

12 In 1973, Plaintiffs Samella Burt, Linda Croskrey and Mary Gonzales brought two class action
13 lawsuits alleging a pattern of employment discrimination in hiring and promotion by Contra Costa County.
14 See Declaration of Arthur Walenta in Support of Defendants’ Opposition To Plaintiffs’ Motion For Award
15 of Attorneys’ Fees (“Walenta Decl.”).² These lawsuits were brought under Title VII of the Civil Rights Act
16 of 1964 and 42 U.S.C. §§ 1981 and 1983. Motion at 2.³ The two actions were consolidated into a
17 single case (“the *Croskrey* action”) on June 12, 1974. Walenta Decl. at ¶ 4.

18 Through “most of 1975,” the parties worked to negotiate a settlement of the *Croskrey* action, in
19 the form of a consent decree. Walenta Decl. ¶ 5. At that time, Plaintiffs were represented by Contra
20 Costa Legal Services Foundation (“Legal Services”). The Consent Decree was entered by Judge Stanley
21 A. Weigel on October 14, 1975, and requires the County to “continue and further implement an effective
22 and affirmative equal employment opportunity policy beyond the affirmative action policies currently in

23
24 ² Arthur Walenta is former Assistant County Counsel for the County and served as lead counsel on
25 the *Croskrey* action. Walenta Decl. at ¶¶ 1-2. According to Walenta, the principal Legal Services attorney
with whom he negotiated the terms of the Consent Decree, Carmen Massey, is now deceased. *Id.* at ¶¶ 4-5.

26 ³ Plaintiffs have attached a copy of one of the complaints, alleging claims under Title VII, to their
27 motion as Exhibit B. The second Complaint, alleging claims under §§ 1981 and 1983, was not provided to
28 the Court by either party. However, Plaintiffs have provided a docket sheet for the consolidated action
indicating that Plaintiffs brought claims under §§ 1981 and 1983, as well as under Title VII. Docket Sheet for
C-73-0906, Exhibit C to Motion.

1 effect.” Consent Decree, Exhibit A to Motion. The County does not admit to any past discrimination in the
2 Consent Decree. *Id.* Nor does the Court make any findings of discrimination. *Id.*

3 Pursuant to the Consent Decree, where an imbalance is established with respect to the number of
4 women or minorities in a particular job classification relative to the number of qualified women and
5 minorities in the workforce in Contra Costa County for that job classification, Plaintiffs may initiate a
6 challenge to the minimum qualifications for that classification. Consent Decree, Section B-1. If the
7 challenge is not resolved within a month, the matter is to be referred to the Merit Board for decision.⁴ *Id.* at
8 Section B-3. Plaintiffs may appeal the decision of the Merit Board and invoke arbitration by giving written
9 notice within a week of the Merit Board’s decision. *Id.* The decision of the arbitrator, in turn, is subject to
10 limited judicial review pursuant to 9 U.S.C. § 11. Consent Decree at Section I, Paragraph F-4(g).

11 In addition, the Consent Decree contains specific provisions concerning examinations for particular
12 job classifications. *Id.* at Section C. These provisions apply when an imbalance is established with respect
13 to the number of women and minorities in these job classifications. *Id.* at Section C-2. Specifically, the
14 Consent Decree provides that examination results shall be discarded upon Plaintiffs’ request where a testing
15 imbalance is established, unless the County requests review of the examination. *Id.* at C-4. A “testing
16 imbalance” exists when the “number of qualified females or minorities who participate in the examination is
17 less than 80% of the passing rate of the remaining participants.” *Id.*

18 Under the Consent Decree, the County was required to pay \$1,143.00 in costs and
19 \$10, 428.00 in attorneys’ fees. Consent Decree at Section 6. The Consent Decree does not contain any
20 provision explicitly addressing the cost of monitoring. According to Walenta, he did not believe at the time
21 the terms of the Consent Decree were negotiated that the County would be required to pay any attorneys’
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26 ⁴ The Consent Decree provides that disputes are to be referred to the “Civil Service Commission.”
27 Consent Decree at B-3. However, that entity was abolished in 1980. According to Plaintiffs, the Merit Board
28 now has the authority and responsibilities previously vested in the Civil Service Commission under the Consent
Decree. Motion at 10. Defendants do not dispute this representation.

1 fees or costs beyond those explicitly provided for under the Consent Decree “despite the fact that the
2 County’s obligations under the Consent Decree would extend into the future. Walenta Decl. at ¶ 8.⁵

3 Finally, the Consent Decree provided for the continuing jurisdiction of the Court, as
4 follows:

5 [t]he Court will retain jurisdiction of these actions to assure compliance with the
6 Affirmative Action program. After five years from entry of this Consent Decree, either
7 party by noticed motion may apply to the Court for an order vacating such decree and
8 dismissing these actions on the ground that further supervision of the Court is not
9 necessary.

10 Consent Decree at Section IX. Neither party has brought a motion to vacate the Consent Decree under
11 this provision.

12 Pursuant to the Consent Decree, the County hired an affirmative action officer, Emma Kuevor, who
13 issues employment reports and data to Plaintiffs at six-month and yearly intervals. Declaration of Emma
14 Kuevor in Support of Defendants’ Opposition To Plaintiffs’ Motion For Award Of Attorneys’ Fees
15 (“Kuevor Decl.”) at ¶ 3.⁶ According to Kuevor, Plaintiffs’ counsel at Legal Services actively monitored
16 compliance with the Consent Decree in the first five years after it was entered. Kuevor Decl. at ¶ 4. After
17 that time, Kuevor did not receive any communications from Plaintiffs’ counsel, although she continued to
18 provide reports and data. *Id.*

19 In 1984, Legal Services requested that the County agree to pay for monitoring staff. 4/2/84 Letter
20 from Legal Services to Arthur Walenta, Exh. D to Supp. LaHood Decl. Legal Services explained the
21 request as follows:

22 [The] eight years [since the Consent Decree was entered] have demonstrated that
23 aggressive outside monitoring is necessary. Unfortunately, they have also demonstrated
24 that effective monitoring requires an amount of time and money that was totally
25 unforeseen at the time the decree was entered. In large part, this is due to the County’s
26 intransigence in dealing with the issues raised during monitoring. The unforeseeable
27 costs of monitoring, along with recent debilitating funding cuts, have made it impossible
28 for our agency to bear the burden thus created. This cannot continue. The County
must take upon itself the financial responsibility for ensuring compliance with its

25 ⁵ Walenta states in his declaration that Ms. Massey, the attorney for Legal Services, also believed that
26 the Consent Decree would not require the County to pay attorneys’ fees for future monitoring. However,
27 Walenta does not provide any specific facts supporting his opinion.

28 ⁶ Ms. Kuevor is currently the Affirmative Action Officer for the County and has held that position since
1975.

1 obligations.
2 *Id.* at 1.⁷ Legal Services also requested attorneys’ fees for time spent pursuing the request made in the
3 1984 letter. *Id.* at 9. The County opposed the request for funding for monitoring staff and Legal Services
4 did not pursue the request any further. Walenta Decl. at ¶¶ 14 -15. According to Ms. Kuevor, she is not
5 aware of the County ever having paid any attorneys’ fees to Legal Services for monitoring of the Consent
6 Decree after it was entered. Kuevor Decl. at ¶ 5.

7 In April, 1999, Price and Associates, upon the request of Legal Services, agreed to represent
8 Plaintiffs. Price Decl. at ¶¶ 27, 29. On October 28, 1999, Plaintiffs filed a motion to substitute Price and
9 Associates as counsel of record. Docket Sheet, Exhibit C to Motion. On October 29, 1999, the Court
10 granted Plaintiffs’ motion ex parte. *Id.* Soon thereafter, Price and Associates retained the services of
11 Crawley Associates, an Equal Employment Opportunity and Diversity specialist firm “to review and make
12 calculations concerning the County’s statistical reports and employment data.” Declaration of Pamela Price
13 in Support of Plaintiffs’ Motion For Award Of Reasonable Attorneys’ Fees And Costs (“Price Decl.” at ¶
14 33). According to name partner Pamela Price, Vernon Crawley (CEO of Crawley and Associates)
15 “reviewed the County’s data and advised us regarding certain issues.” *Id.* Crawley also “met with a group
16 of interested parties concerned with the evolution of employment opportunities in the County’s Fire
17 Services.” *Id.*⁸

18 On June 22, 2000, attorney Maria LaHood, of Price and Associates, sent the County a letter
19 requesting various reports and data from the County. LaHood Decl. at ¶ 3.⁹ The County sent a detailed
20

21 ⁷ This letter was signed by Legal Services’ Executive Director (Mark Goldowitz), Director of Litigation
22 (Philip Bertenthal), and staff attorney Steven R. Berg.

23 ⁸ The time sheets supplied by Plaintiffs indicate that this group was the Black Firefighters’ Association.
24 *See* Exh. D to Price Decl. Although LaHood at one point described this group as “Plaintiff Interveners” in this
25 action, Plaintiffs later conceded that the Black Firefighters’ Association is not a Plaintiff Intervener. *See* Exh.
26 A to Liu Decl. (LaHood letter describing Black Firefighters Association as “Plaintiff Interveners”); Exh. C to
Walenta Decl. (7/12/00 letter of Walenta stating that the County was unaware that the Black Firefighters’
Association were Plaintiff Interveners); Walenta Decl. at ¶ 18 (stating that Price and Associates admitted in
response to Walenta’s letter that the Black Firefighters’ Association are not Plaintiff Interveners).

27 ⁹ The June 22, 2000 letter was not provided to the Court by the parties. However, the July 28, 2000
28 response of the County appears to summarize and respond to all of Plaintiffs’ requests. *See* 7/28/00 Letter
of Emma Kuevor, Exh. A to LaHood Decl. The parties disagree as to whether the reports and data requested
by Price and Associates in the June 22, 2000 letter were required to be provided to Plaintiff under the Consent

1 response on July 28, 2000. 7/28/00 Letter of Emma Kuevor, Exh. A to LaHood Decl. In the July 28
2 letter, the County promised to take a number of specific actions in response to LaHood’s letter.
3 Specifically, the County promised to begin collecting data to determine whether or not the County was
4 meeting its goal of placing at least one woman or minority as a rating member on oral boards. *Id.* The
5 County noted that “although we have not historically collected this information, a form has been generated
6 to capture this information in the future.” *Id.* In addition, the County promised to send announcements
7 regarding “continuous examinations and the procedure to apply for county employment” along with AFDC
8 and General Assistance checks, which the County apparently had not been doing prior to receipt of
9 LaHood’s letter. *Id.* at 4. Finally, the County promised to circulate a memo “to all Workforce Services
10 staff within the Employment and Human Services Department to remind them of their obligation to inform
11 welfare recipients of job openings.” *Id.*

12 On June 30, 2000, Maria LaHood sent another letter to the County in which she expressed
13 concerns about the County’s compliance with the Consent Decree. 6/30/00 Letter of Maria LaHood
14 (“6/30/00 LaHood Letter”), Exh. A to Declaration of Beatrice Liu In Support Of Defendants’ Opposition
15 To Plaintiffs’ Motion For Award Of Attorneys’ Fees (“Liu Decl.”). In that letter, LaHood requested
16 review of the minimum qualifications for three job classifications: 1) Firefighter; 2) Firefighter-Paramedic;
17 and 3) Assistant Fire Chief. *Id.* LaHood expressed particular concern about a new minimum qualification
18 for Firefighters requiring them to obtain a valid California Emergency Medical Technician-1 (“EMT-1”)
19 certificate rather than providing recruits with EMT-1 certification through the Fire Academy, as had been
20 the practice previously. 6/30/00 LaHood Letter at 2. In addition, LaHood questioned the data relied on
21 by the County to determine the number of qualified women and minorities in the workforce, in particular,
22 the County’s use of 1990 Labor Force Data. *Id.* at 2-3.

23 In response, the County asserted that Plaintiffs were not entitled to review of minimum
24 classifications for the Assistant Fire Chief because the position was not subject to the merit system and
25 therefore did not fall under the Consent Decree. Liu Decl. at ¶ 6. With respect to the Firefighter-
26 _____
27 Decree. *See* LaHood Decl. at ¶ 3 (stating that she requested “detailed information required by the Consent
28 Decree”). *But see* Walenta Decl. at ¶ 17 (stating that in the 6/00 letter, Price and Associates “requested many
items of information that were not required to be produced under the Consent Decree).

1 Paramedic classification, the County took the position that Plaintiffs were not entitled to a review of
2 minimum qualifications because the position was a newly created classification with no members yet and
3 thus, there was no determination of imbalance. Liu Decl. at ¶ 7. Finally, the County denied the existence of
4 an imbalance in the Firefighter classification. Declaration of Maria C. LaHood In Support Of Plaintiffs’
5 Motion For Award Of Reasonable Attorneys’ Fees And Costs “LaHood Decl.” at ¶ 5.

6 The Plaintiffs took the issues before the Merit Board in a series of hearings held on September 12,
7 2000, October 17, 2000, and October 24, 2000. The Merit Board determined that there was an
8 imbalance with respect to the Firefighter classification, and declared that a hearing would be convened to
9 address whether the current minimum qualifications disproportionately rejected females and minorities.
10 Minutes Of 10/24/00 Meeting, Exh. B to Liu Decl. The Merit Board also ordered the County to provide
11 Plaintiffs with breakdowns as to sex and minority status of those who took and of those who passed the
12 October 14, 2000 written examination for the Firefighter classification. *Id.* The Merit Board found that
13 Plaintiffs’ challenge to the minimum qualifications for the Firefighter-Paramedic classification was premature
14 because none of the positions had been filled yet. *Id.* Finally, the Merit Board agreed with the County that
15 the Assistant Fire Chief position was exempted from the Merit System and therefore, did not fall under the
16 Consent Decree. *Id.*

17 On November 17, 2000, the County agreed to offer a condensed EMT-1 certificate training
18 course at the Fire District to any otherwise qualified Firefighter applicants who have not already obtained
19 an EMT-1 certificate prior to the next Fire Academy. 11/17/00 Letter of County Counsel Victor J.
20 Westman, Exh. C to LaHood Decl. According to LaHood, because the County’s action addressed
21 Plaintiffs’ primary concern with respect to the Firefighter classification, Plaintiffs “agreed to forego” the
22 hearing on minimum qualifications for Firefighters to which the Merit Board had determined Plaintiffs were
23 entitled. Supplemental Declaration of Maria C. LaHood In Support Of Defendants’ Opposition To
24 Plaintiffs’ Motion For Reasonable Attorney’s Fees (“Supp. LaHood Decl.”) at ¶ 4.¹⁰

27 ¹⁰ Notwithstanding the title of the document, this declaration was submitted in support of Plaintiff’s
28 Reply brief.

1 On January 30, 2001, the County provided Plaintiffs with the results of the written examination for
2 the Firefighter classification, as required by the Merit Board's October 24, 2000 decision. 1/30/01 Letter
3 of Eileen Bitten, Exh. D to LaHood Decl. The County noted that because the written test is "only one step
4 in the examination process" there were "no final rankings of the passing individuals." *Id.* On February 8,
5 2001, LaHood sent a letter to the County requesting that the results of the written examination for the
6 Firefighter classification be discarded, pursuant to the Consent Decree, because the passing rate of the
7 qualified minorities was less than 80% of the passing rate of the remaining participants. *See* 2/14/01 letter
8 of Andrea Cassidy in response to LaHood letter, Exh. C to Supp. LaHood Decl. The County declined to
9 discard the test results, asserting that it was too soon to decide whether the examination should be
10 discarded because the written examination is part of a multi-part examination and that the entire
11 examination was not yet complete. *Id.* However, the County agreed to review the written examination.
12 *Id.*

13 Plaintiffs filed this motion on February 16, 2001, seeking an award of reasonable attorneys' fees
14 and costs under 42 U.S.C. § 1988 and 42 U.S.C. § 2000e-5(k). Motion at 2. Plaintiffs assert that these
15 statutes entitle them to attorneys' fees and costs for post-judgment monitoring and enforcement of the
16 Consent Decree because the parties did not explicitly extinguish a claim for attorneys' fees in the Consent
17 Decree. Applying the "lodestar" approach, Plaintiffs assert in their motion that they are entitled to
18 \$72,918.75 in attorneys' fees (including expert fees), which includes \$14,323.75 for work on this motion.
19 Plaintiffs also seek \$348.62 in costs for photocopies, postage and telephone expenses. Price Decl. at ¶ 42.
20 In addition, Plaintiffs filed with their Reply their February 2001 billing invoices listing additional fees and
21 costs sought. *See* Exh. A to Supp. Price Decl. Subsequently, Plaintiffs filed billing statements for March,
22 April, and May of 2001.

23 Defendants raise four arguments in their Opposition. First, Defendants assert that Plaintiffs are not
24 entitled to any attorneys' fees or expert fees because the statutes under which Plaintiffs seek attorneys'
25 fees, 42 U.S.C. §§ 1988 and 2000e-5(k), did not provide for attorneys' fees or experts' fees at the time
26 the Consent Decree was entered and should not be applied retroactively. Second, Defendants argue that
27 the Consent Decree, which is governed by California contract law, does not provide for an award of
28 attorneys' fees and costs and therefore, does not provide an independent basis for awarding attorneys'

1 fees. Third, even under the attorneys' fees provisions of § 1988 and § 2000e-5(k) (in their current forms),
2 attorneys' fees should not be awarded, Defendants assert, because special circumstances would make
3 such an award unjust. In particular, the County asserts that an award of attorneys' fees would be unjust
4 because the County was never found to have discriminated, has substantially complied with the
5 requirements of the Consent Decree for 25 years and did not agree in the original settlement agreement to
6 pay attorneys' fees for monitoring. Finally, Defendants assert that any award of attorneys' fees should be
7 reduced because the amount claimed by Plaintiffs is excessive.

8 In support of their assertion that the fees sought by Price and Associates are excessive, Defendants
9 make the following specific arguments:

- 10 1) Much of the time Plaintiffs seek fees on was spent pursuing issues of contract interpretation
11 rather than enforcement of the Consent Decree, which is not recoverable. In particular,
12 Plaintiff's challenges to the hiring procedures for the Firefighter-Paramedic and Assistant
13 Fire Chief job classifications were not justified under the terms of the Consent Decree.
14 With respect to the Firefighter-Paramedic classification, Defendants argue that it was clear
15 from the outset that Plaintiffs were not entitled to review of the examination because none of
16 the positions had been filled yet and therefore, there was no imbalance. Because an
17 imbalance is a prerequisite under the Consent Decree for challenging the County's hiring
18 process for a particular job classification, Plaintiffs' had no basis for bringing the challenge
19 when they did. As to the Assistant Fire Chief position, Defendants took the position from
20 the outset that the Consent Decree did not cover this position, and the Merit Board agreed.
21 Therefore, Defendants argue, Plaintiffs' work on this issue amounted to an effort to modify
22 rather than enforce the contract.
- 23 2) Plaintiffs also should not be awarded attorneys' fees for their work because they were not
24 the prevailing party on the issues raised before the Merit Board. Defendants assert that
25 Plaintiffs lost entirely as to their challenges to hiring processes for the Assistant Fire Chief
26 position and the Firefighter Paramedic classification. Defendants further assert that as to
27 the Firefighter classification, Plaintiffs did not prevail because even though the Merit Board
28 found an imbalance, Plaintiffs withdrew the challenge prior to a hearing on the issue.

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- 3) Plaintiffs’ billing statements are too vague to determine whether the time expended was necessary and reasonable.
- 4) Plaintiff’s billing statements reflect work that is outside the scope of the Consent Decree, such as receiving “numerous telephone calls from employees of the County complaining of discrimination.” *See* Motion at 10.
- 5) Plaintiffs should not be awarded attorneys’ fees for their work on the motion for substitution of counsel because Price and Associates could have called the County to determine whether or not a stipulation on this issue might have been possible, thus avoiding the expense of drafting the motion. Indeed, Defendants assert, Plaintiffs should not be awarded any fees for work performed before Price and Associates officially substituted in as Plaintiffs’ counsel.
- 6) Plaintiffs are not entitled to fees for the services of Crawley Associates because expert fees are not recoverable as attorneys’ fees and neither § 1988 nor § 2000e-5(k) provided for expert fees at the time the Consent Decree was entered. Moreover, even if Plaintiffs were entitled to expert fees, the fees sought here are unreasonable because 24.85 of the 32.05 hours billed for the services of Crawley and Associates were for meetings and consultations between attorneys of Price and Associates and Mr. Crawley. Defendants assert that if the Price and Associates attorneys are as experienced as they represent in their motion, these consultations were unnecessary.
- 7) Plaintiffs’ billing records reflect unnecessary hours for preparation of declarations for this motion. In particular, Plaintiffs seek fees for 35.10 hours spent preparing declarations in support of their fees motion even though these declarations are almost identical to declarations that were submitted in a prior action by Price and Associates. Moreover, the award should be reduced, the County argues, because Plaintiffs seek fees for 3.4 hours of time spent by Price on these declarations, even though such declarations are typically drafted by associates.

1 8) Plaintiffs’ billing records reflect a number of instances of duplication of efforts, for example,
2 when more than one attorney from Price and Associates attended meetings with the Black
3 Firefighters Association, the Merit Board Hearings, and the meetings with Vernon Crawley.

4 In Plaintiffs’ Reply, they make the following arguments: first, they argue that Defendants are
5 incorrect in their assertion that Title VII of the Civil Rights Act of 1964 did not contain an attorneys’ fees
6 provision when the Consent Decree was entered. Plaintiffs argue, rather, that Title VII contained an
7 attorneys’ fees provision when it was originally enacted, in 1964. Therefore, Plaintiffs argue, they may seek
8 an award of attorneys’ fees under Title VII (42 U.S.C. § 2000e-5(k)) without reaching the issue of
9 retroactivity. Plaintiffs do not address in their Reply whether Title VII provided for expert fees at the time
10 the Consent Decree was entered. Plaintiffs argue further that the provision in the Consent Decree on
11 attorneys’ fees does not amount to a waiver of the right to seek attorneys’ fees for post-judgment
12 monitoring. Nor, argue Plaintiffs, would an award of attorneys’ fees be unjust due to special circumstances
13 because Plaintiffs have never conceded, either explicitly or by their actions, that they are not entitled to
14 attorneys’ fees for monitoring. Plaintiffs also argue the County has not substantially complied with the
15 Consent Decree but instead has fallen far short of achieving the timetables and goals established under the
16 Consent Decree. Finally, Plaintiffs assert that all of the fees sought are necessary and reasonable.

17 In their supplemental brief, Defendants argue that Plaintiffs are not entitled to expert fees because
18 the Civil Rights Act of 1991, which amended Title VII to provide for expert fees, should not be applied
19 retroactively to a Consent Decree which was entered in 1975. Plaintiffs assert that they do not seek
20 retroactive application of the Civil Rights Act of 1991 because the expert fees sought here were incurred
21 several years after that statute’s enactment. Plaintiffs argue further that even if their request for expert fees
22 raised an issue of retroactivity, the provision of the Civil Rights Act of 1991 allowing for recovery of expert
23 fees should be applied retroactively.

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25 **III. ANALYSIS**

26 **A. Attorneys’ Fees**

27 **1. Sections 1988 and 2000e-5(k)**

28

1 Plaintiffs seek attorneys’ fees under 42 U.S.C. §§ 1988 and 2000e-5(k). Defendants contend that
2 Plaintiffs are not entitled to attorneys’ fees under either section because neither provision provided for
3 attorneys’ fees at the time the Consent Decree was entered. Defendants are correct that § 1988 did not
4 provide for attorneys’ fees at the time the Consent Decree was entered. However, the Civil Rights Act of
5 1964 allowed for an award of attorneys’ fees in its original version, § 2000e-5(k). *See* Pub. L. 88-352,
6 Title VII, Sec. 706, July 2, 1964, 78 Stat. 259. Specifically, the Act allowed courts to award “a
7 reasonable attorney’s fee as part of the costs” to prevailing parties in Title VII actions. Because the
8 attorneys’ fees provision in the Civil Rights Act of 1964 was enacted well before this action was brought, it
9 may serve as a basis for an award of attorneys’ fees.

10
11 **2. Discretion of District Court Under § 2000e-5(k) to Award Attorneys’ Fees**
12 **to “Prevailing Party” for Post-Judgment Monitoring of Consent Decree**

13 Plaintiffs assert that as a “prevailing party,” they are entitled under § 2000e-5(k) to reasonable
14 attorneys’ fees for their post-judgment work monitoring the County’s compliance with the Consent Decree.
15 Plaintiffs are correct.

16 A plaintiff is a “prevailing party” under § 2000e-5(k) when “actual relief on the merits of his claim
17 materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way
18 that directly benefits the plaintiff.” *See Fischer v. SJB-P.D.*, 214 F.3d 1115, 1118 (9th Cir. 2000) (citing
19 *Farrar v. Hobby*, 506 U.S. 103, 111-112 (1992) (construing “prevailing party” under 42 U.S.C. § 1988);
20 *see also Hensley v. Eckerhart*, 461 U.S. 424, 432 n. 7 (1983) (noting that § 1988 was patterned after
21 2000e-5(k) and that Congress intended that the standards for awarding attorneys’ fees to “prevailing
22 parties” would be the same under both provisions). The Supreme Court in *Farrar v. Hobby* explained that
23 “a material alteration of the legal relationship occurs [when] a plaintiff becomes entitled to enforce a
24 judgment [or] consent decree ... against the defendant.” 506 U.S. at 113. A prevailing party may be
25 awarded not only reasonable attorneys’ fees for work performed prior to entry of judgment but also may
26 recover reasonable fees for monitoring compliance with the consent decree after judgment is entered. *See*
27 *Pennsylvania v. Delaware Valley Citizens’ Council For Clean Air*, 478 U.S. 576, 559 (1986)

1 (awarding attorneys’ fees to prevailing party under Clean Water Act for work done on related
2 administrative proceeding noting that under § 1988, “post-judgment monitoring of a consent decree is a
3 compensable activity for which counsel is entitled to a reasonable fee”); *Gates v. Rowland*, 39 F.3d 1439,
4 1449-1451 (9th Cir. 1994) (affirming award of attorneys’ fees pursuant to § 1988 for monitoring of
5 consent decree, the terms of which were negotiated in settlement of plaintiff’s § 1983 claims); *Eirhart v.*
6 *Libby-Owens-Ford Co.*, 996 F.2d 846, 850 (7th Cir. 1993) (holding that district court had discretion to
7 award attorneys fees under § 2000e-5(k) for “successful efforts” to implement consent decree, the terms of
8 which were negotiated in settlement of plaintiffs’ employment discrimination claims).

9 In awarding attorneys’ fees for monitoring, courts have reasoned that services devoted to
10 reasonable monitoring of compliance with a consent decree are compensable because they are ““a
11 necessary aspect of plaintiffs’ prevailing in the case.”” *Keith v. Volpe*, 833 F.2d 850, 856 (9th Cir. 1987)
12 (citing to *Garrity v. Sununu*, 752 F.2d 727, 738 (1st Cir. 1984), which was cited to with approval by the
13 Supreme Court in *Pennsylvania v. Delaware Valley Citizens’ Council For Clean Air*, 478 U.S. at
14 559); *see also Northcross v. Board of Education of the Memphis City Schools*, 611 F.2d 624, 637
15 (6th Cir. 1980) (holding that monitoring of consent decree was compensable under § 1988 because these
16 services were “essential to the long-term success of the plaintiff’s suit”) (cited to with approval by the
17 Supreme Court in *Pennsylvania v. Delaware Valley Citizens’ Council For Clean Air*, 478 U.S. 546,
18 559 (1986)). Adopting the reasoning of these cases, the Supreme Court in *Pennsylvania v. Delaware*
19 *Valley Citizen’s Council For Clean Air* held that a prevailing party under the Clean Air Act was entitled
20 to fees for work on a related administrative proceeding following entry of a consent decree. 478 U.S. at
21 558. The Court explained:

22 Protection of the full scope of relief afforded by the consent decree was thus crucial to
23 safeguard the interests asserted by [plaintiff]; and enforcement of the decree, whether in
24 the courtroom before a judge, or in front of a regulatory agency with power to modify
25 the substance of the program ordered by the court, involved the type of work which is
26 properly compensable as a cost of litigation under § 304 [of the Clean Air Act]. In a
27 case of this kind, measures necessary to enforce the remedy ordered by the District
28 Court cannot be divorced from the matters upon which [plaintiff] prevailed in securing
the consent decree.

1 *Id.* at 558-559.¹¹

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3
4 ¹¹ An argument might be made that the Supreme Court’s recent decision in *Buckhannon Board and*
5 *Care Home Inc. v. West Virginia Dep’t of Health and Human Resources*, __ U.S. __, 121 S.Ct. 1835
6 (2001) casts doubt on the validity of the cases that have awarded fees for monitoring. In particular, there is
7 language in *Keith v. Volpe* suggesting that **one** of the reasons that fees for monitoring are permissible under
8 § 1988 is because the definition of “prevailing party” was broad enough to cover even achievements that were
9 not ordered by a court. As the court said in *Keith*, “[t]he history of [§ 1988] makes clear Congress’ intent that
10 a plaintiff need not obtain formal relief in order to recover fees.” 883 F.2d at 855. In fact, the Ninth Circuit
11 was relying on the same legislative history as the Supreme Court had cited to in a number of cases in addressing
12 the definition of a “prevailing party.” For example, in *Maher v. Gagne*, the Court held that a party could be
a “prevailing party” under § 1988 even though the case had terminated in a consent decree, quoting a Senate
report which stated that “parties may be considered to have prevailed when they vindicate rights through a
consent judgment or without formally obtaining relief.” 448 U.S. 122, 129 (1980). On the basis of such
references to the legislative history in *Maher* and in several other Supreme Court cases, numerous courts
adopted the “catalyst” theory for determining whether a party had prevailed. *See, e.g., Kilgour v. City of*
Pasadena, 53 F.3d 1007, 1010 (9th Cir. 1995) (adopting catalyst theory). Under this theory, a party is a
“prevailing party” if his action was a “catalyst” which motivated the defendant to provide the relief originally
sought through litigation, even if there is no final judgment in an action. *Id.*

13 However, the Supreme Court recently rejected the catalyst test, in *Buckhannon Board and Care*
14 *Home Inc. v. West Virginia Dep’t of Health and Human Resources*, __ U.S. __, 121 S.Ct. 1835 (2001);
15 *see Bennett v. Yoshina*, 2001 WL 880856 (9th Cir., August 7, 2001). In *Buckhannon*, the Court held that
16 a party was not entitled to attorneys’ fees as a “prevailing party” where there was no “judicially sanctioned
17 change in the legal relationship of the parties.” *Id.* at 1840. The Court explained that notwithstanding the
“dicta” in *Maher* which seemed to allow a party to be defined as a “prevailing party” on the basis of a private
settlement, *Maher* only stood for the proposition that “fees *may* be assessed after a case has been settled by
the entry of a consent decree.” *Id.* at 840 n.7.

18 One might argue that the Supreme Court’s rejection in *Buckhannon* of the catalyst theory casts doubt
19 on the validity of the Ninth Circuit’s holding in *Keith v. Volpe*, to the extent that the court in *Keith* relied on
the theory that § 1988 does not require that a plaintiff prevail in a formal sense. Following this line of reasoning,
Buckhannon arguably requires that there be some additional judicial intervention associated with monitoring
beyond the consent decree itself.

20 This Court rejects that argument, however, on the basis that it would unjustifiably extend *Buckhannon*
21 and would be inconsistent with existing Supreme Court precedent. To the extent that the Ninth Circuit in *Keith*
22 cited to the legislative history in support of the proposition that § 1988 does not require a party to obtain
“formal” relief to prevail, that statement, as in *Maher*, is dicta. In fact, in *Keith*, the plaintiffs were monitoring
23 compliance with a judicially approved consent decree and the district court had made explicit findings that the
particular monitoring activities in which the plaintiffs engaged were “a necessary aspect of plaintiffs’
prevailing.” 833 F.2d at 856 (quoting *Garrity v. Sununu*, 752 F.2d 727, 738 (1st Cir. 1984). Based on the
24 same reasoning, the Supreme Court in *Pennsylvania v. Delaware Valley Citizen’s Council For Clean Air*
held that a prevailing party under the Clean Air Act was entitled to fees for work on a related administrative
25 proceeding following entry of a consent decree. 478 U.S. at 558. There is no suggestion in *Buckhannon* that
the Court intended to overturn its prior precedent on this issue. To the contrary, the distinction drawn by the
26 Court in *Buckhannon* between private settlements and consent decrees, and, in particular, the reference to the
“judicial approval and oversight” of the latter implicitly affirms the reasoning of the Court in *Pennsylvania v.*
27 *Delaware Valley Citizens’ Council For Clean Air*. 121 S.Ct. at 1840 n.7. Therefore, this Court concludes
28 that the cases holding that a prevailing party may be awarded fees for reasonable monitoring of a court-
approved consent decree – with or without subsequent judicial intervention – remain good law.

1 Here, Plaintiffs are a class “composed of all past and present and future females and persons of
2 racial and ethnic minorities who have been, or will be, denied employment or advancement by the County
3 because of its pattern and practice of discrimination.” First Amended Complaint, Exh. B to Motion.
4 Plaintiffs alleged a pattern and practice of employment discrimination in hiring and promotion by the County
5 and obtained relief in the form of the Consent Decree. That order required the County to implement an
6 affirmative action plan and gave Plaintiffs the right to challenge hiring and promotion practices that violated
7 the terms of the Consent Decree. Because the Consent Decree materially altered the legal relationship
8 between the parties, Plaintiffs are “prevailing parties” under § 2000e-5(k). As such, they are entitled to
9 reasonable attorneys’ fees for the work in monitoring and enforcing the Consent Decree.

10 3. Special Circumstances Exception to § 2000e-5(k)

11 The County argues that the Court should decline to award attorneys’ fees on the basis that special
12 circumstances make such an award unjust. In particular, the County asserts that it would be unjust to
13 award attorneys’ fees because: 1) the County never believed that the Consent Decree required it to pay
14 attorneys’ fees; 2) the County has never agreed to pay attorneys’ fees at any time and Plaintiffs conceded in
15 1984 that the Consent Decree did not provide for attorneys’ fees; and 3) the County has always
16 substantially complied with the terms of the consent decree. The County’s arguments are unconvincing.

17 In civil rights cases, “successful plaintiffs should ordinarily recover an attorneys’ fee unless special
18 circumstances would render such an award unjust.” *Aho v. Clark*, 608 F.2d 365, 367 (9th Cir. 1979)
19 (citations omitted). In determining whether to exercise its discretion to award attorneys’ fees, the Court
20 should consider such factors as “the size of the class benefitted, the importance of the benefits achieved by
21 the suit, the need for an attorneys’ fee in order to attract competent counsel to the suit, and the presence of
22 bad faith or obdurate conduct on the part of either party.” *Id.* In *Aho*, plaintiffs brought a class action
23 lawsuit challenging Hawaii’s newly adopted school lunch program, asserting that the program failed to meet
24 federal guidelines and violated plaintiffs’ civil rights under 42 U.S.C. § 1983. *Id.* at 366. The parties
25 entered into a consent agreement in settlement of the action, which was entered two months after the Civil
26 Rights Attorney’s Fee Awards Act of 1976 (amending 42 U.S.C. § 1988) took effect. *Id.* at 367.
27 Plaintiffs sought attorneys’ fees under § 1988, as amended, and the court denied the request, finding that an
28 award would be unjust. In particular, the court noted that because the Civil Rights Attorney’s Fee Awards

1 Act of 1976 did not take effect until two months before the consent agreement was approved, the
2 defendants “may well have relied upon their understanding that the law did not authorize attorneys’ fee
3 awards in such cases.” *Id.* These special circumstances, the court found, justified denying attorneys fees.
4 *Id.* The court noted further that “[a]lthough the class of children who might benefit from the school
5 breakfast program is a large one, we are not persuaded that an award of attorneys’ fees was essential to
6 attract competent counsel.” *Id.* The court’s conclusion on this issue was apparently based upon the fact
7 that “[a]ppellees were already in the process of establishing a school breakfast program at the time this suit
8 was filed.” *Id.* The court further found that the defendants had shown no bad faith and were, in fact
9 “apparently quite willing to expand the breakfast program.” *Id.*

10 Defendants argue that the facts in this case are similar to those in *Aho* in that the parties did not
11 anticipate that attorneys’ fees would be awarded for future monitoring when they negotiated the Consent
12 Decree. This argument is unconvincing, however, because the facts here are distinguishable from those in
13 *Aho*. In particular, the attorneys’ fees provision at issue here, § 2000e-5(k), had been in existence for
14 almost a decade before this action was brought. As a result, the “special circumstances” that made an
15 award of attorneys’ fees unjust in *Aho*, involving a newly enacted statute, do not exist here. The right of
16 prevailing plaintiffs to pursue attorneys’ fees under Title VII was well-established when the Consent Decree
17 was negotiated and entered. Further, there is no authority suggesting that the mere fact that the parties may
18 not have anticipated that monitoring would be required more than 25 years after the Consent Decree was
19 entered is sufficient to justify denying attorneys’ fees on the basis of special circumstances. *See Earth*
20 *Island Institute Inc. v. Southern California Edison*, 92 F. Supp. 2d 1060, 1065 (S.D. Cal. 2000)
21 (awarding attorneys’ fees under Clean Water Act for monitoring consent decree where parties had not
22 anticipated such monitoring would be required).¹²

23 The Court also rejects Defendants’ contentions that fees should not be awarded because the
24 Decree does not specifically **provide** for attorneys’ fees for monitoring. Attorneys’ fees are available to

26
27 ¹² Plaintiffs contend further that this case is distinguishable from *Aho* because the County has acted
28 in bad faith. The County, on the other hand, asserts that it has always acted in good faith and has substantially
complied with the terms of the consent decree. Because the Court finds that *Aho* is distinguishable on other
grounds, the Court declines to reach the question of whether or not the County has acted in bad faith.

1 prevailing parties unless “the defendant shows that the plaintiff *clearly* waived fees as part of the
2 settlement.” *Muckleshoot Tribe v. Puget Sound Power & Light*, 875 F.2d 695, 697 (9th Cir. 1989)
3 (emphasis added). In *Muckleshoot*, plaintiffs sued under § 1983 for interference with their federally
4 protected water rights. *Id.* at 697. The parties negotiated a consent decree which was silent as to
5 attorneys’ fees. *Id.* Looking to both the language of the consent decree and to extrinsic evidence of the
6 conduct of the parties, the court found the parties had not manifested a clear intent to waive the right to
7 seek attorneys’ fees under § 1988. *Id.* at 699. On that basis, the court reversed the district court’s denial
8 of attorneys’ fees and remanded for further proceedings. *Id.*; see also *Earth Island Institute Inc.*, 92 F.
9 Supp. 2d at 1065 (awarding attorneys’ fees to plaintiffs where consent decree contained attorneys’ fees
10 provision but did not address post-judgment monitoring fees).

11 Here, the language of the Consent Decree does not manifest a clear intent to waive Plaintiffs’
12 statutory right to seek attorneys’ fees under Title VII for future monitoring. Rather, the Consent Decree,
13 while providing for the payment of a specified amount in attorneys’ fees already incurred, simply fails to
14 address the possibility of attorneys’ fees for post-judgment monitoring.

15 Nor does the conduct of the parties manifest a clear intent to waive the right to seek attorneys’ fees
16 for monitoring. The County presents the following evidence in support of its’ argument that Plaintiffs
17 waived the right to seek fees for post-judgment monitoring: 1) Walenta’s statement that “it was understood
18 by myself and Ms. Massey that [the amount of attorneys’ fees and costs specified in the Consent Decree]
19 were the only attorneys’ fees and costs provided under the Consent Agreement” (Walenta Decl. at ¶ 8);
20 and 2) Plaintiffs’ 1984 request for monitoring staff and attorneys’ fees and their failure to pursue the matter
21 for 17 years after their request was rejected by the County. This evidence cannot bear the weight that the
22 County places on it. Walenta’s conclusory statement that both attorneys’ intended that no future attorneys’
23 fees would be awarded does not carry any significant weight to the extent that he purports to speak for
24 opposing counsel, who is now deceased. Walenta does not support his assertions regarding opposing
25 counsel’s understanding with any specific facts. Moreover, the 1984 letter requesting that the County pay
26 for monitoring staff and attorneys’ fees does not anywhere concede that the County is not obligated to pay
27 attorneys’ fees for monitoring under the Consent Decree. Nor is the fact that Plaintiffs did not pursue the
28

1 request for 17 years after it was rebuffed sufficient to show a “clear intent” to waive the right to seek
2 attorneys’ fees for monitoring work. Indeed, Plaintiffs conducted no monitoring during most of this period.

3 Because the County has not established that Plaintiffs waived their right to seek attorneys’ fees
4 under Title VII or that special circumstances make such an award unjust, Plaintiffs are entitled to an award
5 of reasonable attorneys’ fees.

6 **B. Expert Fees**

7 Plaintiffs seek expert fees for the services of Vernon Crawley pursuant to 42 U.S.C. § 2000e-5k,
8 which was amended by the Civil Rights Act of 1991 to provide for expert fees in addition to attorneys’
9 fees. Defendants assert that the Court should not award expert fees because the case was no longer
10 pending on the date of the amendment’s enactment and because retroactive application of the 1991
11 amendment would result in manifest injustice. Plaintiffs, on the other hand, argue that they are entitled to
12 expert fees because the expert fees were incurred after the passage of the amendment and, therefore, there
13 is no issue regarding retroactivity. Alternatively, Plaintiffs assert that 42 U.S.C. § 2000e-5k, as amended,
14 should be applied retroactively because the amendment is procedural and would not result in manifest
15 injustice. Because the Court agrees with Plaintiffs’ first argument, it does not reach Plaintiffs’ second
16 argument.

17 Defendants rely heavily upon *Stender v. Lucky Stores, Inc.*, 780 F. Supp. 1302 (N.D. Cal.
18 1992). In that case, the court held that the Civil Rights Act of 1991 applied to the case because it was still
19 pending when that Act took effect. *Id.* at 1306. This holding does not help Defendants’ position here.
20 Plaintiffs in this case seek expert fees that were incurred long after the Civil Rights Act of 1991 amended
21 Title VII to explicitly provide for expert fees. In fact, a careful reading of the cases that address the issue
22 reveals that the requirement that a case be pending at the time a statute took effect applies only where a
23 party seeks to recover attorneys’ fees and costs that were incurred *prior* to its effective date. This point is
24 illustrated by the Ninth Circuit’s decision in *Stanwood v. Green*, 744 F.2d 714 (9th Cir. 1984).

25 In *Stanwood*, the plaintiffs sought attorneys’ fees under 42 U.S.C. § 1988 for fees incurred in
26 litigation of a civil rights action brought under 42 U.S.C. § 1983 involving conditions in Coos County Jail.
27 744 F.2d at 715. The action was filed in 1972 and a consent decree was signed in August 1976. *Id.* On
28 October 19, 1976, § 1988 came into effect. That provision, which was patterned after the attorneys’ fees

1 provision in the Civil Rights Act of 1964 (the provision that is at issue here), allowed courts to award
2 attorneys' fees to prevailing parties in actions brought under § 1983. *See Hensley v. Eckerhart*, 461 U.S.
3 424, 432 n.7 (1983) (stating that § 1988 was patterned after the attorneys' fees provision in the Civil
4 Rights Act of 1964 and concluding that Congress intended that the standards for awarding attorneys' fees
5 be the same under both statutes). The case was largely inactive from August of 1976 until February of
6 1981, although the plaintiffs' attorneys conducted some monitoring activities during this period. *Stanwood*,
7 559 F. Supp. 196, 197, 202 (D. Or. 1983). In February of 1981, the defendants threatened to take
8 actions that the plaintiffs considered to violate the consent agreement and plaintiffs brought a motion
9 requesting that the defendants be held in contempt. *Id.* at 197. Subsequent negotiations between the
10 parties resulted in an amended consent decree, which was signed in February of 1982. *Id.* Soon
11 thereafter, the plaintiffs sought attorneys' fees under § 1988, seeking to recover fees incurred from the time
12 the case was filed, in 1972. *Id.* at

13 In addressing whether or not the plaintiffs were entitled to attorneys' fees, the district court in
14 *Stanwood* addressed two distinct periods: 1) the period of 1972 to October 19, 1976; and 2) the period
15 of October 19, 1976, to 1982. With respect to the period between 1972 and October 19, 1976, the court
16 began its analysis with the rule that § 1988 was to be applied to cases pending on the date that it went into
17 effect. *Id.* at 198 (citing to *Hutto v. Finney*, 437 U.S. 678 (1978)). Because the consent decree was
18 signed in August of 1976, and because the court found that the case was inactive between August 1976
19 and 1981 (aside from monitoring), the court held that the case was not pending when section 1988 became
20 effective, in October 1976. *Id.* On that basis, the court denied the plaintiffs' request for attorneys' fees for
21 the period of 1972 to October 19, 1976. *Id.* The district court noted that it was important "no hiatus or
22 period of dormancy occur[red] . . . [because] an expansive view of pendency in equitable proceedings may
23 permit long dormant cases to be reopened solely for the purpose of obtaining attorneys' fees not available
24 when the cases were in active litigation." *Id.* at 200.

25 Notwithstanding the district court's decision that the case was not "pending" between 1976 and
26 1981, however, the court *did* award attorneys fees incurred after § 1988 came into effect, on October 19,
27 1976. *Id.* at 201-202. The court explicitly noted that some of these fees were for monitoring the
28 Defendants' compliance with the consent decree. *Id.* at 202.

1 On appeal, the Ninth Circuit affirmed the decision of the district court. 744 F.2d at 715. The
2 Ninth Circuit explained that the district court awarded attorneys’ fees from the time that § 1988 became
3 effective but declined to award attorneys’ fees for work done prior to the date when section 1988 became
4 effective because the case was not pending in October of 1976. *Id.* The Ninth Circuit agreed with the
5 district court that the case was not pending because at the time § 1988 went into effect there were no
6 substantive claims to be resolved. *Id.* The court of appeals did not question the district court’s conclusion
7 that the plaintiffs were entitled to attorneys’ fees – including fees for monitoring – from the date that § 1988
8 became effective. *Id.*

9 Here, Plaintiffs seek expert fees for monitoring that was conducted *after* the Civil Rights Act of
10 1991 took effect. As in *Stanwood*, Plaintiffs may recover these fees regardless of whether the case was
11 pending when the Civil Rights Act of 1991 took effect because they are not seeking to recover fees that
12 were incurred at a time when expert fees were not available. *See Stanwood*, 559 F. Supp. 196 at 200.
13 Therefore, Plaintiffs’ request for expert fees under § 2000e-5k does not require that that provision be
14 applied retroactively.

15 Further, the Court rejects Defendants’ assertion that an award of expert fees in this case would
16 result in manifest injustice because Title VII did not provide for expert fees at the time the Consent Decree
17 was entered. Defendants argument is based on two factual assertions: 1) that Defendants agreed to enter
18 into the Consent Decree at least in part in reliance on their belief that Title VII did not allow for an award of
19 expert fees and that they would not have entered into the agreement had they understood that expert fees
20 could be awarded; and 2) that if the Court awards expert fees for monitoring, Defendants’ will be required
21 to pay more for monitoring than they would have been if only attorneys’ fees were awarded. Neither
22 assertion is supported by the record.

23 There is no indication in the record that Defendants relied upon their understanding of whether Title
24 VII might or might not allow for an award of expert fees when they entered into the Consent Decree.
25 Indeed, Defendants’ counsel states that the County never **considered** the possibility that monitoring fees of
26 any kind might be awarded. Walenta Decl. at ¶ 8. Moreover, even if Defendants were aware at the time
27 they entered into the Consent Decree that Title VII did not provide for an award of expert fees, the Court
28 is not convinced that Defendants would have acted any differently, given that it was not uncommon for

1 courts to award expert fees under common law doctrines. *See West Virginia University Hospitals v.*
2 *Casey*, 499 U.S. 83, 92-93 (1991) (holding that § 1988, prior to the 1991 amendment allowing expert
3 fees, must be construed strictly to exclude expert fees but noting that prior to 1976 courts sometimes
4 awarded expert fees under common law doctrines); *Bradley v. School Board of City of Richmond*, 416
5 U.S. 696 (1974) (holding that retroactive application of attorneys’ fee provision did not result in manifest
6 injustice in part because even before the enactment of the statute, courts awarded attorneys’ fees under
7 common law doctrines); *see also American Federation of State County and Municipal Employee v.*
8 *County of Nassau*, 1995 WL 347031 (holding that amendment to § 2000e-5k under the Civil Rights Act
9 of 1991 allowing for expert fees should be applied retroactively because expert fees are collateral to
10 underlying claims in the action and finding that there was no manifest injustice in applying amendment
11 retroactively).

12 Defendants also appear to assert that if the Court awards expert fees, they will be required to pay
13 more for monitoring than they would otherwise have been required to pay. The record does not support
14 this conclusion – indeed, it is only Defendants’ speculation. Moreover, if the Court declines to award
15 expert fees on this motion, Plaintiffs will be forced to forego reliance on experts in the future, with the result
16 that work that could have been performed in less time by experts, potentially at lower hourly rates, may be
17 performed instead by attorneys. Over the long term, then, Defendants might in fact face larger awards for
18 monitoring if expert fees were excluded than they would if expert fees were allowed.

19 For all of these reasons, the Court is unpersuaded by Defendants’ argument that an award of
20 expert fees for monitoring would result in manifest injustice. Therefore, the Court holds that Plaintiffs may
21 be awarded expert fees for monitoring conducted after the Civil Rights Act of 1991 took effect.

22
23 **C. Calculation of Reasonable Attorneys’ Fee Award**

24 **1. Lodestar Analysis**

25 The starting point for determining reasonable fees is the calculation of the “lodestar,” which is
26 obtained by multiplying the number of hours reasonably expended on litigation by a reasonable hourly rate.
27 *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987) (citing to *Hensley v.*
28 *Eckerhart*, 461 U.S. 424 (1983)). In determining a reasonable number of hours, the Court must review

1 detailed time records to determine whether the hours claimed by the applicant are adequately documented
2 and whether any of the hours claimed by the applicant were unnecessary, duplicative or excessive.

3 *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *reh'g denied, amended on*
4 *other grounds*, 808 F.2d 1373 (9th Cir. 1987). To determine a reasonable rate for each attorney, the
5 Court must look to the rate prevailing in the community for similar work performed by attorneys of
6 comparable skill, experience and reputation. *Id.* at 1210-1211.

7 In calculating the lodestar, the Court should consider any of the factors listed in *Kerr v. Screen*
8 *Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975), *cert. denied* 425 U.S. 951 (1976), that are relevant.
9 *Jordan*, 815 F.2d at 1264 n. 11 (noting that the Ninth Circuit no longer requires that the district court
10 address every factor listed in *Kerr*). In *Kerr*, which was decided before the lodestar approach was
11 adopted by the Supreme Court as the starting point for determining reasonable fees in *Hensley v.*
12 *Eckerhart*, 461 U.S. 424, 433 (1983), the Ninth Circuit adopted the 12-factor test articulated in *Johnson*
13 *v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). This analysis looked to the following
14 factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the
15 questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other
16 employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is
17 fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved
18 and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability'
19 of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in
20 similar cases.

21 To the extent that the *Kerr* factors are not addressed in the calculation of the lodestar, they may be
22 considered in determining whether the fee award should be adjusted upward or downward, once the
23 lodestar has been calculated. *Chalmers*, 796 F.2d at 1212. However, there is a strong presumption that
24 the lodestar figure represents a reasonable fee. *Jordan*, 815 F.2d at 1262. An upward adjustment of the
25 lodestar is appropriate only in extraordinary cases, such as when the attorneys faced exceptional risks of
26 not prevailing or not recovering any fees. *Chalmers*, 796 F.2d at 1212.

27
28 **2. Reasonableness of Hourly Rates**

1 Plaintiffs are represented by four attorneys who seek fees for monitoring work: Pamela Price,
2 Maria C. LaHood, John T. Bell, and Bernadette Rigo. Plaintiffs also seek expert fees for work performed
3 by Crawley Associates and for the services of a clerk/paralegal, Johnny Harper. Plaintiffs assert that the
4 fee award should be based upon the following rates: 1) Pamela Price (partner) – \$375.00/hour; 2) Maria
5 C. LaHood (associate) – \$225.00/hour; 3) John T. Bell (associate) – \$100.00/hour for hours billed before
6 he was admitted to the California Bar and \$200.00/hour for hours billed after he was admitted to the Bar;¹³
7 4) Bernadette Rigo – \$200.00/hour; 5) Johnny Harper – \$100.00/hour; 6) Crawley Associates (expert) –
8 \$175.00/hour. The reasonableness of these rates will be addressed for each individual below.

9
10 **a. Pamela Price**

11 Ms. Price is the most experienced attorney representing Plaintiffs and lead counsel. Price Decl. at ¶
12 29. She was admitted to the California State Bar in April of 1983, and has extensive experience in the area
13 of employment discrimination. Price Decl. at ¶ 1. She has served as trial counsel on numerous civil rights
14 cases in which the plaintiffs have obtained substantial jury verdicts or settlements. *Id.* at ¶¶ 19-26. She has
15 served as a lecturer or panelist at several symposia and seminars, including the Civil Law and Procedure
16 Institute sponsored by the California Center for Judicial Education and Research, the National Bar
17 Association’s Wiley Branton Symposium, and a Yale Law School symposium on sexual harassment. *Id.* at
18 ¶¶ 16-18. Ms. Price commenced doing business as The Law Offices of Pamela Y. Price in 1991.

19 Plaintiffs seek an award of attorneys’ fees based on a rate of \$375.00/hour for Pamela Price.
20 Plaintiffs have submitted declarations indicating that this rate is consistent with the prevailing market rate for
21 someone with Ms. Price’s skills and experience. *See* Declaration of Howard Moore, Jr. In Support Of
22 Plaintiffs’ Motion For Award Of Reasonable Attorneys’ Fees And Costs (stating that attorneys with
23 comparable education and experience to Ms. Price regularly charge and receive \$300.00 to
24 \$400.00/hour). Courts awarding attorneys’ fees to Ms. Price have awarded Ms. Price \$235.00/hour for
25 services rendered between 1991 and 1994 and \$250.00/hour for services rendered between 1995 and
26

27 ¹³ Plaintiffs in their motion sought \$200.00/hour for all hours billed by John T. Bell. At oral argument,
28 however, Plaintiffs stipulated that Bell should be awarded the same rate as a paralegal for work done prior to
his admittance to the California Bar, in December 2000.

1 1996. In addition, in 1998 Judge Orrick awarded Ms. Price \$350.00/hour for work on the merits and
2 \$275.00/hour for work on the attorneys' fees motion. Exh. B to Price Decl. In light of the above, the
3 Court finds the rate sought by Plaintiffs of \$375.00/hour for time billed by Ms. Price to be reasonable.

4
5 **b. Maria C. LaHood**

6 Maria C. LaHood is an associate who has been employed by Price and Associates since May
7 2000. LaHood Decl. at ¶ 2. She was admitted to practice law in California in 1995 and prior to working
8 for Price and Associates practiced law with the United States Department of Housing and Urban
9 Development and the Community Legal Aid Society of Alameda County. Price Decl. at ¶ 30.
10 Plaintiffs request an award based on a rate of \$225.00/hour for Ms. LaHood. The Declarations of John
11 Burris and William McNeill support the conclusion that this is a reasonable rate in light of Ms. LaHood's
12 skill, expertise and experience. *See* Burris Decl. at ¶ 16 (stating that a rate of \$275.00/hour for the services
13 of Maria LaHood is consistent with the market rate charged by firms for associates with comparable
14 experience); McNeill Decl. at ¶ 9 (stating that \$200.00 to \$225.00/hour is reasonable for the associates
15 who worked with Ms. Price on this action). Therefore, the Court calculates the lodestar based on a rate
16 of \$225.00/hour for Ms. LaHood.

17
18 **c. John Bell**

19 John Bell was admitted to practice law in December 2000 but began working for Price and
20 Associates in November 1999. Plaintiffs seek \$200.00/hour for Mr. Bell's services after admission to the
21 Bar and \$100.00/hour – the rate billed for paralegals – for his services before he was admitted to the bar.
22 The Burris Declaration states that \$200.00/hour is a reasonable rate for someone of Bell's experience.
23 Burris Decl. at ¶ 17. The McNeill Declaration states generally that “the rates requested for each associate
24 is consistent with the current market rates commanded by attorneys' of equivalent experience.” McNeill
25 Decl. at ¶ 9. The Court finds the rate of \$100.00/hour for work done before admission to the Bar and
26 \$200.00/hour for work done after admission to be reasonable.

27
28 **d. Bernadette Rigo**

1 Bernadette Rigo received her J.D. from Santa Clara University Law School in 1997 and was
2 admitted to practice law the same year. Plaintiffs seeks an award based on a rate of \$200.00/hour.
3 According to John Burris, this rate is consistent with the rate charged by other firms for associates with
4 comparable experience. Burris Decl. at 5. The Court finds this rate to be reasonable.

5
6 **e. Crawley Associates**

7 Vernon Crawley has worked for over ten years in the area of equal employment opportunity
8 (“EEO”), first as an affirmative action officer for the County of Marin and more recently, as a private
9 consultant on equal opportunity matters. *See* Resume of Vernon Crawley, Exh. C to Price Declaration.
10 He has received training as an EEO investigator by both the Equal Employment Opportunity Commission
11 (“EEOC”) and the California Department of Fair Employment and Housing. *Id.* He has been a workshop
12 leader on the issue of workplace diversity at conferences sponsored by the International Personnel
13 Management Association, the California Workforce Association, the California Association of School
14 Administrators, the California Association of Equal Rights Professionals and the California Network of
15 Educational Charters. *Id.* Plaintiffs seeks \$175.00/hour for the services of Mr. Crawley. In light of Mr.
16 Crawley’s experience in the EEO area, the Court finds this rate to be reasonable.

17
18 **f. Johnny M. Harper**

19 Plaintiff seeks fees for work performed by a law clerk/ paralegal, Johnny M. Harper, at a rate of
20 \$100.00/hour. *See* Price Decl. at ¶ 40. Defendant does not challenge the reasonableness of this rate, and,
21 therefore, the Court uses this rate to calculate the fee award in this action.

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3. Reasonableness of Time Spent

a. Hours Billed by Attorneys and Paralegal in this Action

Plaintiffs have presented billing records through May 31, 2001, reflecting the following hours for which they seek an award of fees:¹⁴

<u>Attorney</u>	<u>Rate/Hour</u>	<u>Hours</u>
Pamela Price	\$375.00	50.2 ¹⁵
Maria LaHood	\$225.00	314.95 ¹⁶
John Bell	\$100.00 (up to 12/1/00)	8.4
	\$200.00 (as of 12/1/00)	17.1
Bernadette Rigo	\$200.00	23.0
Johnny Harper	\$100.00	5.1 ¹⁷
<u>Consultant</u>		
Vernon Crawley	\$175.00	32.05

According to Plaintiffs' counsel, Plaintiffs exercised billing judgment by deleting approximately .75 hours of time that would not have been billed to paying clients. Price Decl. at ¶ 41.

In addition, Plaintiffs seek an award of costs for their monitoring. They have presented to the Court billing statements reflecting \$348.33 in costs up to the filing of this motion and \$286.11 for the period of February 1, 2001, through May 31, 2001.

b. Overall Reasonableness of Hours Billed in the Action

¹⁴ The Court excludes all fees incurred subsequent to the filing of Plaintiffs' Motion except those that were incurred in connection with the Motion.

¹⁵ This figure includes 19.45 hours billed after Plaintiffs' Motion was filed for work related to that Motion and 30.75 hours prior to filing that motion. Plaintiffs state in their Motion that Price billed a total of 32.35 hours up to the date of the motion. However, the time sheets provided by Plaintiffs in support of their motion reflect a total of only 30.75 hours.

¹⁶ This figure includes 114.6 hours billed after the Motion was filed for work related to that Motion and 200.35 hours before the motion was filed.

¹⁷ This figure includes 3.6 hours billed before the Motion was filed and 1.5 hours billed after the Motion was filed for work related to the Motion.

1 In order to calculate the amount of the lodestar, the Court must determine the number of hours that
2 were reasonably expended in monitoring by Plaintiffs. *See Jordan v. Multnomah County*, 815 F.2d
3 1258, 1262 (9th Cir. 1987). The County asserts that the number of hours billed by Plaintiffs for their
4 monitoring work is excessive and asserts that if the Court awards attorneys’ fees, the amount awarded
5 should be substantially less than that sought by Plaintiffs. The Court considers each of the County’s
6 arguments below. In doing so, the Court establishes guidelines for determining the types of monitoring
7 activities that are “reasonable and necessary” under the Consent Decree, both for the purposes of
8 calculating the fee award for this motion and to minimize disputes concerning fee awards, if any, for future
9 monitoring.

10
11 **i. Scope of the Consent Decree**

12 The County argues in several different ways that the work performed by counsel was not
13 contemplated by the Consent Decree. It argues that various tasks either effectively sought to modify –
14 rather than enforce – the Decree, or were beyond the scope of tasks necessary to enforce the Decree.

15 The starting point for analysis must be the basis on which fees are awarded for monitoring.
16 Reasonable monitoring fees are available because they are “a necessary aspect of plaintiff’s prevailing in the
17 case.” *Keith v. Volpe*, 833 F.2d 850, 856 (9th Cir. 1987). As the Supreme Court held, such measures
18 are “necessary to enforce the remedy . . . and cannot be divorced from the matters on which [plaintiff]
19 prevailed in securing the consent decree.” *Pennsylvania v. Delaware Valley Citizens’ Counsel for*
20 *Clean Air*, 478 US, 546, 559 (1986).

21 With this framework in mind, the Court looks to the Consent Decree to determine which tasks are
22 integral to its enforcement and which are not. One of the most significant guidelines in the Consent Decree
23 is the requirement that Plaintiffs must establish an imbalance in a particular classification before they are
24 entitled to review the hiring procedures for that qualification. In order to allow Plaintiffs to determine
25 whether such an imbalance exists, the County is required to provide certain statistics to Plaintiffs on a
26 regular basis. Thus, implicit in the Consent Decree is a framework for monitoring that requires Plaintiffs to
27 engage in certain core tasks such as reviewing statistics provided by the County and bringing challenges
28 before the Merit Board where there appears to be an imbalance.

1 Monitoring may also involve tasks that are less obviously related to the obligations established
2 under the explicit terms of the Consent Decree. For instance, if Plaintiffs question the validity of the
3 statistics provided by the County, they may feel that it is necessary to review alternative sources of
4 statistical information that could reveal discrepancies in the County’s figures.

5 Thus, the tasks that Plaintiffs may perform in monitoring and enforcing the Consent Decree vary
6 from those specifically included in the Consent Decree to tasks which may be only incidentally related to
7 enforcement.

8 The extent to which fees and costs incurred in monitoring are “reasonable and necessary” will
9 therefore depend, in part, on where the tasks fall in this spectrum. Performance of core tasks are more
10 self-evidently necessary to enforcement than performance of tasks less related to the explicit requirements
11 of the Consent Decree.

12 With this background, the Court analyzes the specific challenges raised by the County.

13
14 **ii. Fees for Work Related to Claims Brought Before Merits Board**
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16 The County argues that Plaintiffs may not recover fees for time spent pursuing issues related to the
17 Assistant Fire Chief, the Firefighter-Paramedic, and the Firefighter classifications for two reasons. First, as
18 to the first two classifications, the County argues that Plaintiffs may not recover attorneys’ fees because
19 these challenges constituted efforts to modify the Consent Decree rather than to enforce it. The County
20 relies on *Willie v. Hunt*, 732 F.2d 383 (4th Cir. 1984) in support of this position. Second, the County
21 argues that in any case, Plaintiffs are not entitled to attorneys’ fees for these challenges because Plaintiffs did
22 not prevail on any of the issues.

23 In *Willie v. Hunt*, the plaintiffs were mentally and emotionally impaired youth who brought a class
24 action against various treatment facilities under the Education For All Handicapped Children Act. 732 F.2d
25 at 385. The case settled with a consent judgment, and the plaintiffs’ counsel monitored performance by the
26 defendants. *Id.* In the course of monitoring, two questions arose concerning the scope of the class under
27 the consent judgment. Because the parties could not agree, both questions were litigated and the plaintiffs
28 lost on both issues. Subsequently, the plaintiffs sought attorneys’ fees for their work litigating these issues.

1 The district court awarded fees, but the court of appeals reversed. The court of appeals, relying on
2 *Hensley v. Eckerhart*, 461 U.S. 424 (1983), stated as follows:

3 In some cases a plaintiff may present in one lawsuit distinctly different claims for relief that
4 are based on different facts and legal theories. In such a suit, even where the claims are
5 brought against the same defendants . . . counsel’s work on one claim will be unrelated to
6 his work on another claim. Accordingly, work on an unsuccessful claim cannot be
7 deemed to have been expended in pursuit of the ultimate result achieved.

8 *Id.* at 386 (citations omitted). Applying this reasoning, the court concluded that the issues litigated were
9 “akin to a question of contract interpretations” and were not “inextricably intermingled with the original
10 claims in the lawsuit” on which the plaintiffs prevailed. *Id.* The court also noted that these hours were
11 excessive and unnecessary, given that they arose because counsel was not “totally effective in formulating
12 language that was self-executing” in the consent judgment. *Id.* at 387.

13 The Court is not persuaded by the County’s argument. The monitoring efforts at issue here, in
14 contrast to the claims at issue in *Willie*, do not involve distinct claims based upon a completely different set
15 of operative facts than the underlying claims. Rather, the claims brought before the Merit Board, all of
16 which related to ensuring equal opportunity in hiring and promotion by the County, were “inextricably
17 intermingled” with the claims of employment discrimination upon which Plaintiffs prevailed in the original
18 action. Although the Merit Board may have had to interpret the Consent Decree to reach its decisions, the
19 focus of the challenges themselves do not appear to have been the scope of the Consent Decree.
20 Therefore, the Court declines to reduce the award on the basis that the challenges concerning the Assistant
21 Fire Chief and the Firefighter-Paramedic classifications involved issues of contract interpretation rather than
22 monitoring.

23 The County further argues that Plaintiffs may not recover fees for claims on which Plaintiffs did not
24 prevail before the Merits Board, citing to the rule of *Hensley v. Eckerhart* that “[w]here the plaintiff has
25 failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the
26 unsuccessful claim should be excluded in considering the amount of a reasonable fee.” Opposition at 15
27 (citing *Hensley*, 461 U.S. at 440). The flaw in this argument is that the claims on which Plaintiffs prevailed
28 in the original action were broad claims alleging a pattern and practice of discrimination in hiring and
promotion by the County. As discussed above, the challenges to hiring procedures brought by Plaintiffs

1 before the Merit Board for the three job classifications of Assistant Fire Chief, Firefighter-Paramedic, and
2 Firefighter are all “inextricably intermingled” with the original claims on which Plaintiffs prevailed. As a
3 result, Plaintiffs need not establish that they are prevailing parties by virtue of their success before the Merits
4 Board to be entitled to an award of attorneys’ fees. Rather, they are prevailing parties because of their
5 success on the merits resulting in the Consent Decree.¹⁸

6 Nevertheless, even if the claims brought by Plaintiffs before the Merit Board were “inextricably
7 intermingled” with claims on which Plaintiffs prevailed in the underlying action, fees should not be awarded
8 for work that is “excessive, redundant, or otherwise unnecessary.” *Willie*, 732 F.2d at 387 (citing
9 *Hensley*, 461 U.S. at 1939-1940). Further, in determining the amount of a reasonable award, the court
10 should consider the “overall relief obtained by the plaintiff in relation to the hours reasonably expended.”
11 *Hensley*, 461 U.S. at 1940. Thus, even though Plaintiffs do not need to establish that they were
12 “prevailing parties” with respect to each challenge brought before the Merit Board, their lack of success on
13 two of the three issues raised may be considered in determining the amount of the award.

14 Here, Plaintiffs raised three issues before the Merit Board. On the first issue, the challenge to
15 minimum qualifications in the Firefighter classification, Plaintiffs obtained good results. Plaintiffs presented
16 evidence of an imbalance, as defined under the Consent Decree, in the firefighter classification. That type
17 of challenge is specifically contemplated by the Consent Decree. *See* Consent Decree, Section B-1.
18 Plaintiffs’ challenge to minimum qualifications in the Firefighter classification based on the existence of an
19 imbalance provides an example of a core task, under the Consent Decree, which the Court finds to be
20 necessary and reasonable.

21 The Merit Board found that there was, in fact, an imbalance and on that basis concluded that
22 Plaintiffs were entitled under the terms of the Consent Decree to a review of minimum qualifications for the

23
24 ¹⁸ The County asserts that Plaintiffs “cannot claim that since they substantially prevailed on the
25 underlying class action lawsuit resulting in the Consent Decree, that this previous success entitles them to
26 attorneys’ fees under new and different issues.” Opposition at 16 n. 3. The Court rejects this argument
27 because the issues raised before the Merit Board are not “new and different” but rather, are essentially the same
28 as those that were raised in the original litigation. Further, the case cited by the County simply stands for the
proposition that a party that prevailed in a prior action cannot recover attorneys’ fees for work on a subsequent
action in which it did not prevail where the subsequent action is based on a distinct issue. *See National Parks
and Conservation Association v. County of Riverside*, 81 Cal. App. 4th 234, 240 (2000). That is not the
situation here.

1 Firefighter classification. Although Plaintiffs did not pursue the hearing to which they were entitled under the
2 Merit Board's decision, their challenge on this issue resulted in the County agreeing to provide EMT-1
3 training for recruits to that position. LaHood Decl. at ¶ 8; *see also* 11/17/00 Letter From Victor Westman,
4 Exh. C to LaHood Decl. As the County's policy concerning the EMT-1 training had been a significant
5 concern of Plaintiffs, this concession was beneficial to Plaintiffs. In addition, the Merit Board ordered that
6 the County provide written examination results for the Firefighter classification.

7 On the other hand, Plaintiffs did not obtain any significant beneficial results from their challenges to
8 minimum qualifications for the Assistant Fire Chief position or for the Firefighter-Paramedic classification.
9 In particular, the Merit Board found that it had no jurisdiction over Plaintiffs' challenge to minimum
10 qualifications for the Assistant Fire Chief classification because it did not fall under the Consent Decree.
11 The Merit Board also found that Plaintiffs' challenge to minimum qualifications for the Firefighter-Paramedic
12 classification was premature because no one had been hired to fill these positions yet and therefore,
13 Plaintiffs could not establish an imbalance in that classification. Minutes of 10/24/00 Meeting, Exh. B to Lui
14 Decl. While the failure to prevail on these two issues might not, on its own, justify a reduction in the fee
15 award sought by Plaintiffs, such a reduction is warranted where, as here, Plaintiffs did not prevail because
16 their actions were not integral to the enforcement of the Consent Decree.

17 First, with respect to the Firefighter-Paramedic classification, Plaintiffs have not provided any
18 persuasive justification for bringing the challenge before hiring had commenced for the classification. This
19 challenge was obviously premature, given that no imbalance could have existed at the time the challenge
20 was brought. Nor is the Court convinced by Plaintiffs' assertion, made at oral argument, that the challenge
21 was justified because the creation of the Firefighter-Paramedic position was an attempt by the County to
22 evade the terms of the Consent Decree. According to Plaintiffs, the Firefighter-Paramedic classification
23 was created in order to shift the imbalance from the Firefighter classification to the newly created
24 classification. If Plaintiffs are correct as to the County's motivations, the County's strategy eventually will
25 be reflected in an imbalance in the Firefighter-Paramedic classification. At that time, Plaintiffs will be
26 permitted under the Consent Decree to challenge the hiring procedures for the Firefighter-Paramedic
27 classification. However, in the absence of any evidence showing that the County acted in bad faith in
28 creating the new classification, the Court finds that the time billed for challenging the minimum qualifications

1 of Firefighter-Paramedics was not necessary and reasonable. Accordingly, the Court reduces the number
2 of hours sought by Plaintiffs by .6 hours for work done by Attorney LaHood. *See* Second Supplemental
3 Price Decl., Exh. G (Billing For Firefighter Paramedics).

4 Plaintiffs' challenge to hiring for the Assistant Firefighter position is also outside the scope of the
5 Consent Decree. According to Walenta, the Consent Decree does not cover jobs that are exempt from
6 the merit system. Walenta Decl. at 5, ¶ 19. Walenta notified Plaintiffs' counsel of his belief when he
7 learned that Plaintiffs intended to challenge hiring procedures for the Assistant Fire Chief position. *Id.*
8 Plaintiffs do not dispute Walenta's assertion that positions outside the merit system are not covered under
9 the Consent Decree, although the Consent Decree does not explicitly provide as much. *See* Supplemental
10 LaHood Decl. at 2, ¶ 8. Further, Plaintiffs concede that the Assistant Fire Chief position was exempted
11 from the merit system effective June 22, 2000. *Id.* Because all of the time billed on this issue occurred
12 after June 22, 2000 (*see* Second Supplemental Price Decl., Exh. H (Billing For Assistant Fire Chief)), this
13 work fell outside the scope of the Consent Decree and should not be included in the Court's fee award.
14 Accordingly, the Court reduces the hours sought by Plaintiff by 1.3 hours for work done by attorney
15 LaHood.

17 **iii. Vague Billing Statements**

18 The County asserts that many of Plaintiffs' billing statement entries are so vague that it is not
19 possible to evaluate whether these expenses were reasonable and necessary. *See* Exh A. to Cassidy Decl.
20 at 1-7 (listing 124.30 hours worth of time for which the entries are too vague to evaluate). The Court finds
21 that Plaintiffs' billing statements are sufficiently specific to allow the Court to determine whether the time
22 spent was necessary and reasonable.

24 **iv. Billing for Meeting with Members of the Community**

25 The County asserts that Plaintiffs have billed for work that is outside of the scope of the Consent
26 Decree. *See* Exh. A to Cassidy Decl. at 19-25. As discussed above, in determining whether time billed is
27 "necessary and reasonable," the Court looks to the terms of the Consent Decree. While the Court is likely
28 to consider necessary time billed for core tasks that are explicitly contemplated by the terms of the Consent

1 Decree, tasks that are not explicitly contemplated by the enforcement mechanism laid out in the Consent
2 Decree are less likely to be appropriate. The Court finds that Plaintiffs have not adequately demonstrated
3 that time billed for meetings and telephone conversations with members of the community was necessary
4 and reasonable and therefore does not include the hours billed for this time in its fee award.

5 Plaintiffs seek fees for 18.95 hours spent meeting and having telephone conversations with class
6 members and members of the community. *See* Exh. A to Second Supp. Price Decl. The Consent Decree
7 recognizes the importance of maintaining contacts between Plaintiffs' counsel and members of the
8 community. *See* Consent Decree at F-5. Section F-5 envisions the creation of an advisory board which
9 would include representatives of all minorities in the County as well as other interested organizations and
10 which would hold regular meetings. *Id.* Had Plaintiffs' meetings and conversations with members of the
11 community occurred in the context of such an advisory board, such tasks would have been explicitly
12 contemplated by the Consent Decree and more likely to be necessary to its enforcement. Instead, Plaintiffs
13 have devoted many hours to meetings and communications that do not clearly relate to the monitoring that is
14 envisioned in the Consent Decree. Therefore, the Court declines to find these hours "necessary and
15 reasonable." Accordingly, the Court reduces the hours sought by Plaintiffs by the following amounts: 4.1
16 hours (Price); 13.35 hours (LaHood); 1.0 hour (Bell).¹⁹

17
18 **v. Fees Unreasonably Incurred**

19 **a. Internal Office Conferences**

20 The County also asserts that Plaintiffs have billed an unreasonable number of hours for internal
21 office conferences. Plaintiffs have identified a total of 49.9 hours devoted to internal office conferences
22 between April 26, 1999, and March 30, 2001. *See* Exh. B to Second Supp. Price Decl. (Billing For
23 Internal Office Conferences). This constitutes approximately 11% of the total hours billed for this period.
24 The Court finds these hours to be somewhat excessive and therefore reduces the hours sought by Plaintiffs

25 _____
26 ¹⁹ Although Plaintiffs list the time billed by attorney LaHood for communications with class members
27 as 13.85 hours, .5 hours of this time already was excluded by the Court from the fee award on the basis that
28 it was billed for work on the challenge to hiring for the Assistant Fire Chief position. *Compare* Exh. A to
Second Supp. Price Decl. (Billing For Discussions With Class Members And Others) with Exh. H to Second
Suppl Price Decl. (Billing For Assistant Fire Chief).

1 for internal office conferences by 20%. Specifically, the Court reduces the hours sought as follows: 1.1
2 hours (Price); 3.5 hours (LaHood); .2 hours (Rigo); 1.3 hours (Bell).

3
4 **b. Reply Brief**

5 The Court has identified 40.9 hours spent preparing the Reply brief and supporting declarations.
6 Of these, 36 hours were billed by attorney LaHood and 4.9 were billed by attorney Price. Of course, the
7 Defendant's Opposition was extensive. It included a 25-page brief and multiple declarations. The Reply
8 brief required a line-by-line analysis of the 60 specific billing entries challenged by Defendant. While
9 responding to such a complex Opposition is indeed challenging, the Court finds that 42.5 hours is
10 somewhat excessive and therefore reduces the award by ten hours at the rate of attorney LaHood.

11
12 **c. Supplemental Brief**

13 The Court has identified 42.5 hours spent preparing the supplemental brief and additional time
14 break-downs requested by the Court. These materials were very useful to the Court. The Court also
15 recognizes that the legal issues addressed in the supplemental briefs were difficult. Nonetheless, the Court
16 finds the hours billed for preparation of these materials to be somewhat excessive. Therefore, the Court
17 reduces Plaintiffs' award by five hours of attorney LaHood's time.

18
19 **vi. Work Prior to Substitution as Counsel and on Motion for**
20 **Substitution of Counsel**

21 The County argues that Plaintiffs should not be awarded fees for work done before they officially
22 substituted in as counsel, including work on the motion to substitute in as counsel. Opposition at 18. The
23 County offers no authority in support of this assertion except the general rule of *Hensley* that fees may not
24 be awarded for hours that are excessive, redundant, or otherwise unnecessary. The Court does not find
25 any support for the County's broad assertion that Plaintiffs' counsel should not be awarded fees for any
26 work performed prior to the date on which they officially substituted in as counsel. So long as the work
27 was reasonably necessary for monitoring the Consent Decree, the Court declines to reduce the award on
28 the basis that work was performed before Plaintiffs' counsel officially substituted in.

1 On the other hand, Plaintiffs’ motion for substitution of counsel raises a distinct legal issue that does
2 not involve monitoring and has nothing to do with the claims on which Plaintiffs prevailed. Under *Hensley*,
3 the Court can find no basis for awarding attorneys’ fees for work on this motion. 461 U.S. at 434-435.
4 Moreover, the hours spent on this particular matter were excessive. Accordingly, the Court reduces the
5 hours sought by 16.6 hours as to attorney Rigo and 1.55 as to attorney Price.

6
7 **vii. Work by Crawley Associates**

8 Plaintiffs seek fees for 32.05 hours billed by Crawley Associates. The Court finds this amount to
9 be reasonable and therefore uses this figure in determining the amount of the fee award.

10
11 **viii. Work on Declarations**

12 The County asserts that Plaintiffs spent excessive time on declarations in support of this motion.
13 See Exh. A to Cassidy Decl. at 14-15. The County points to a motion for attorneys’ fees by Price and
14 Associates filed in another action, *Andrew P. v. San Francisco Unified School District*, which includes
15 declarations that are almost identical to those submitted in support of this motion. In particular, the motion
16 in that case is supported by declarations of Pamela Price, William McNeill, Howard Moore, Darryl Parker,
17 and John L. Burris which are very similar to the declarations filed in support of this action. In fact, Plaintiffs
18 submitted only one declaration (the declaration of Oren Sellstrom) that was not also filed, in some form, in
19 support of the *Andrew P.* motion. The Court agrees that in light of this apparent duplication, the amount
20 sought by Plaintiffs for work on these declarations is not entirely reasonable. Therefore, the Court reduces
21 the hours sought by Plaintiffs in the following amounts: 2.4 hours (Bell); .5 hours (PYP); 6.4 hours (MCL).
22 See Exh. D to Second Supp. Price Decl. (Billing For Andrew P. Declarations).²⁰

23
24 ²⁰ Defendants assert that the fee award should also be reduced because work performed by attorney
25 Price on declarations should have been done by an associate. The Court rejects this assertion on two grounds.
26 First, a review of Plaintiffs’ billing records indicates that the bulk of the time billed on declarations was, in fact,
27 for work done by associate LaHood. It is not unreasonable for a partner to review the work that has been
28 delegated to an associate. Second, the Court declines to adopt in this case the approach advocated by
Defendants whereby the Court is required to scrutinize each time entry to determine whether or not it could
have been performed more efficiently by an associate. See *United States v. City and County of San
Francisco*, 748 F. Supp. 1416, 1432 (N.D. Cal. 1990) (noting that “in this circuit, there is ample authority for
awarding a single fee for all work done”). Although it might be appropriate for the Court to reduce an award

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ix. Duplication of Effort

The County argues that Plaintiffs’ award should be reduced because of overstaffing. *See* Exh. A to Cassidy Decl. at 15-16. In particular, the County argues that it was unnecessary for both Ms. Price and Ms. LaHood to attend the Merit Board hearings and the meetings with the Black Firefighters’ Association. Given the significance of the Merit Board hearings, the Court finds that fees for the attendance of both attorney Price and attorney LaHood are reasonable and necessary. Because the Court has already excluded the time billed for meetings with the Black Firefighters’ Association, it need not reach the County’s second argument.

x. Costs

Plaintiffs identify \$348.33 in costs up to the date the Motion was filed. In addition, Plaintiffs have identified \$4.40 in costs following the filing of the Motion that were clearly delineated in Plaintiffs’ billing records as costs associated with the Motion. *See* 2/01 billing statement, Exh. A to Supp. Price Decl. Plaintiffs have supported their request for costs with a declaration by attorney Price stating that these costs were reasonably and necessarily incurred. Price Decl. at 11. Defendants have not objected to the costs sought by Plaintiffs. Therefore, Plaintiffs are awarded \$352.73 in costs.

xi. Calculation of Lodestar

Based on the reasons stated above, the Court finds the following hours to be “reasonable and necessary” for the purposes of calculating the lodestar amount:

	Price	LaHood	Bell	Rigo	Harper	Crawley
Total Hours Sought through 5/31/01	50.2	314.95	25.5 (8.4 before admission, 17.1 after admission)	23.0	5.1	32.05

where a partner had billed for purely clerical tasks, that is not the case here.

United States District Court

For the Northern District of California

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Reduction for Communications with Class Members	4.1	13.35	1.0 (at post-admission rate)			
Reduction for Internal Office Meetings	1.1	3.5	1.3 (at post-admission rate)	.2		
Reduction for Motion for Substitution	1.55			16.6		
Reduction for Declarations	.5	6.4	2.4 (at post-admission rate)			
Reduction for Reply		10				
Reduction for Supp. Briefing		5				
Total Reasonable and Necessary Hours	42.95	276.7	8.4 before admission; 12.4 after admission	6.2	5.1	32.05
TOTAL FEES	\$16,106.25	\$62,257.5	\$3,320.00	\$1,240.00	\$510.00	\$5,608.75

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Based on these figures, the lodestar for Plaintiffs' monitoring is \$89,395.23, that is, \$89,042.50 in attorneys' and expert fees plus \$352.73 in costs. The Court finds this amount to be reasonable and therefore awards the lodestar amount without any upward or downward adjustment. *See Jordan*, 815 F.2d at 1262 (holding that there is a strong presumption that the lodestar represents a reasonable fee).

IV. CONCLUSION

Based on the above analysis, Plaintiffs' Motion [Docket No. 126] is GRANTED in part. Plaintiffs are awarded \$89,395.23 in fees and costs.

IT IS SO ORDERED.

Dated: August 20, 2001

JOSEPH C. SPERO
United States Magistrate Judge