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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LOCAL 10, INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION, et al.,

vs.

CITY OF OAKLAND, et al.,

Defendants.

Case No. C-03-2962 TEH (JL)

**LOCAL 10 PLAINTIFFS' NOTICE OF ANI
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES THEREON**

Date: July 11, 2005
Time: 10:00 a.m.
Courtroom: No. 12, 19th Floor
Judge: Hon. Thelton E. Henderson

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LOCAL 10 PLAINT. MEMO RE MOT.
FOR ATTY FEES AND COSTS C-03-2962 TEH (JL)

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I. NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on July 11, 2005, at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom No. 12, located on the 19th Floor of the United States District Court, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Local 10, International Longshore And Warehouse Union (hereinafter, Local 10, ILWU), Billy Kepoo, Allen Chapman, Christopher Clay, Silas Dunn, Willie Hamlin, Ernest Evans, David Loville, Lawrence Massey, Byron Moore, Sr., John Nishinaga, Willow Rosenthal, Jessica Lawrence, Scott Fleming, Jennifer Schockemoehl, Lawrence Menard, Jeffrey Crow Bolt, Matthew Dodt, Rebecca Sonchek, Terrence Enright, Arthur Martinez, Henry Norr, Steven Sakala, Susan Quinlan, Tim Ridolfi, Alicia Grogan-Brown, Kenneth Hayes, Dean Royer, Bernadine Mellis, Thomas Becker, Patricia "Max" Rorty, Jesse Christensen, Diana Bohn, Miles Montabano, Nicholas Frabasilio, Cyprus Gonzalez, Kristin Meeker, Eric Shaw, Violeta Foregger, Chelsea Smith, Aidan Kotler, Lesley Krueger, Marko Sakmann, Judith Mirkinson, Vaahdat Saadat, Clay Hinson, Marc De Giere, David Martinez, Laura "Ariel" Glenn, Sarah Kennedy, Cliff Close, Kate Sassoon, and Jack Heyman (hereinafter referred to collectively as the "Local 10 plaintiffs") will move this Court for an award of reasonable attorneys' fees and costs for the services performed by their counsel in achieving the final settlement of plaintiffs' declaratory and injunctive relief claims, which included an agreement by the City of Oakland to substantially reform its crowd control policies.

Local 10 plaintiffs' motion will be based on the written settlement agreement which was approved by the Court and filed on December 28, 2004 (Ex. 1, Chanin decl., Ex. A), the Memorandum of Points and Authorities set forth below, the supporting declarations and evidence filed contemporaneously herewith, the Court file herein, 42 U.S.C. §§1983 and 1988, California Civil Code §§52 and 52.1, California Code of Civil Procedure §1021.5 and all other

1 argument, legal authorities and/or evidence as may be presented prior to and/or at the time of the
2 hearing.¹

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¹ To the extent that the motion for attorneys' fees and costs filed in the related *Coles v. City of Oakland, et al.* C03-2961 TEH (JL) action includes additional argument, legal authorities and/or evidence which supports the Local 10 plaintiffs' recovery of attorneys' fees and costs, it is hereby incorporated herein by reference and shall serve as a further basis for the Local 10 plaintiffs' motion. incorporated herein by reference.

II. INTRODUCTION

1
2 The Local 10 plaintiffs are fifty-two individuals who were injured during an anti-war
3 demonstration at the Port of Oakland on April 7, 2003 when the Oakland Police Department
4 (OPD) used excessive force against them. Local 10 of the ILWU is also a named plaintiff in
5 the action. (Ex. 1, Chanin decl., ¶5)

6
7 Nine plaintiffs are Local 10, ILWU dockworkers, represented in this action by the Law
8 Offices of John L. Burris. Local 10 is represented by Robert Remar of the law firm of Leonard
9 Carder LLP. (Ex. 1, Chanin decl., ¶6). The remaining forty-one plaintiffs include
10 demonstrators, legal observers, journalists, a Local 10, ILWU business agent and others
11 present at the demonstration, are represented by the James B. Chanin, Julie M. Houk, Rachel
12 Lederman and the National Lawyer's Guild, Bobbie Stein and Osha Neuman. Alan Schlosser
13 and other staff counsel of the American Civil Liberties Union of Northern California (ACLU-
14 NC) have associated as Local 10 plaintiffs' counsel primarily for the purpose of obtaining
15 injunctive and declaratory relief. *Id.*

16
17 Pursuant to the terms of the December 28, 2004, Stipulation and Order Approving
18 Partial Settlement of Plaintiffs' Claims for Injunctive Relief, Local 10 plaintiffs move the Court
19 for an award of reasonable attorneys' fees and costs for counsel's work performed in
20 connection with the partial settlement of the plaintiffs' injunctive relief claims. This settlement
21 included an agreement by the City of Oakland to substantially reform its crowd control
22 policies. (Ex. 1, Chanin decl., ¶7, Ex. A).

III. ISSUES TO BE DECIDED

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24
25 (1) Whether the Local 10 plaintiffs are entitled to an award of attorneys' fees and costs
26 under 42 U.S.C. §§ 1983 and 1988, California Civil Code §§52 and 52.1 and/or under California
27

1 Code of Civil Procedure §1021.5;

2 (2) The amount of reasonable attorneys' fees and costs which the Local 10 plaintiffs are
3 entitled to recover for work which led to the successful resolution of the plaintiffs' injunctive and
4 declaratory relief claims, including the calculation of the lodestar;

5 (3) The amount of reasonable attorneys' fees and costs for work performed in connection
6 with the injunctive relief;

7 (4) Whether the fees for work on the merits and on the attorneys' fee motion should be
8 enhanced, and
9

10 (5) The amount of costs to be awarded to the Local 10 plaintiffs.

11 **IV. STATEMENT OF FACTS AND PROCEEDINGS**

12 ***A. Underlying Facts***

13 Following the United States' invasion of Iraq, a peaceful anti-war demonstration was
14 announced for the Port of Oakland. Demonstrators planned to picket the gates of two
15 shipping Companies that had supported the United States' war effort. (Ex. 1, Chanin decl.,
16 ¶8). Although the OPD could have chosen to arrest people who blocked traffic and refused to
17 move, they instead made plans prior to the demonstration to disperse the crowd by running
18 into people with motorcycles and firing "less lethal" munitions, including wooden dowels, shot
19 filled "bean bags," rubber pellets and "sting grenades." *Id.*
20

21 The departmental policy then in existence placed virtually no restraints on the use of
22 such weapons in crowd control situations and provided no direction to officers about when to
23 arrest non-compliant demonstrators rather than resorting to the use of munitions and chemical
24 agents. (Ex. 1, Chanin decl., ¶9).
25

26 On April 7, 2003, at approximately 7:30 a.m., although traffic was flowing and the
27

1 demonstrators had already cleared away from the gates, the OPD officers used barrages of
2 weapons fire and motorcycle bumps to push demonstrators, legal observers, journalists and
3 others more than a mile down a series of roads, herding them, by an indirect route, to the
4 BART station. The roads that the demonstrators were forced down had no means of egress
5 and the demonstrators were essentially trapped. (Ex. 1, Chanin decl., ¶10).

6 The fifty-two (52) Local 10 plaintiffs were injured by abusive police tactics as they
7 attempted to comply with police orders. Some people were shot while others were run into
8 with motorcycles or clubbed with batons. (Ex.1, Chanin decl., ¶11). None of the Local 10
9 plaintiffs were convicted of having committed any crimes, much less crimes that would have
10 justified use of such extreme force. *Id.* Forty (40) of the Local 10 plaintiffs are anti-war
11 demonstrators, peace activists, legal observers, journalists and others who had come to the
12 Port of Oakland to participate or observe the demonstration. *Id.* Some of these plaintiffs have
13 suffered life altering, permanent and disfiguring physical injuries from the OPD's use of so-
14 called, "less lethal" force.²

15
16
17 Nine (9) of the Local 10 plaintiffs are ILWU dockworkers who were shot or otherwise
18 injured by police excessive force while exercising their rights and duties under their union
19 contract to "stand by" and await word from their union officials as to whether they were
20 authorized to cross the picket lines and report to work. One Local 10 plaintiff was dragged
21 from his vehicle, subjected to excessive force and arrested without probable cause while acting
22 in his capacity as a Local 10 business agent. (Ex.1, Chanin dec.¶13).

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26 ² By way of example, photographs of the injuries sustained by Local 10 plaintiff, Willow
27 Rosenthal illustrate how destructive these weapons can be and the disfiguring injuries they can
28 inflict. (Ex. 1, Chanin decl., ¶12. Ex. B).

1 ***B. Public Outrage***

2 The shocking and violent OPD response to the peaceful anti-war demonstration at the
3 Port of Oakland was the subject of national and international press reports and was denounced
4 by groups including the United Nations' Human Rights Commission. (Ex. 1, Chanin decl., ¶14,
5 Ex. C, April 2, 2004 re: report issued by United Nations Commission on Human Rights).
6 Despite public outrage over the OPD's conduct, Deputy Chief Haw congratulated command
7 staff, stating that they had done a "fantastic job" and referred callously to the incident as the
8 "Party at the Port." (Ex. 1, Chanin decl., ¶15, Ex. D)³.

9 The reckless and malicious nature of the OPD's use of force against peaceful
10 demonstrators was also reflected by admissions made by Sgt. Chris Delrosario to a civilian
11 following the incident, saying that he was very tired because he "had to shoot a lot of people
12 today," referring to the Port of Oakland demonstration, and that he "shot this one bitch in the
13 forehead and her titties popped out." (Ex. 2, Declaration of Jovan Johnson).

14 On the day of the incident and in days and weeks that followed, people who had been
15 injured and/or arrested, as well as witnesses, contacted the National Lawyer's Guild, the
16 American Civil Liberties Union of Northern California (hereinafter, ACLU-NC) and the
17 individual Local 10 plaintiffs' counsel seeking representation. (Ex. 1, Chanin decl ¶16, Exhibit
18 3, Schlosser dec., ¶17, Exhibit 8, Lederman decl., ¶¶10-13, Exhibit 5, Burris decl ¶16, Exhibit
19 7, Neumann decl, ¶¶10-11; Exhibit 6, Stein decl, ¶¶11-14).

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24 ³ This is in stark contrast to the City of Boston which not only promptly settled the monetary
25 damage claims of the family of an Emerson College student who was shot in the eye and killed
26 by "less lethal" munitions used for crowd control by Boston Police in the aftermath of the Red
27 Sox World Series victory, but which appointed an independent investigator who recently
concluded that the shooting was caused by a lack of training, inadequate supervision and poor
planning among other things. Ex. 1, Chanin decl., Ex. H.

1 ***C. Association of Counsel, Filing Complaint and Injunctive Relief Settlement***

2 Within a short time after the incident, counsel for Local 10 plaintiffs began meeting
3 together and agreed to associate to represent plaintiffs in this action. (Ex. 1, Chanin decl.,
4 ¶16). Local 10 counsel believed that it would be more efficient and cost-effective to pool their
5 collective experiences and resources in bringing a consolidated action, even though each
6 plaintiff would have had the right to bring their own separate action. *Id.*⁴

7 It soon became evident to counsel that the OPD's rampant use of excessive force was
8 the product of wholly inadequate crowd control policies which allowed officers to use "less
9 lethal" munitions and other force against people who posed no serious threat to others. (Ex. 1,
10 Chanin decl. ¶16-20). As a result, Local 10 plaintiffs' counsel focused on these policy issues
11 from the initial stages of the case and decided to include claims for injunctive and declaratory
12 relief in the Complaint. (*Id.*; Ex. 3, Schlosser decl. ¶18-20).

13 The original Complaint was filed on June 26, 2003. It contained claims for declaratory
14 and injunctive relief in addition to damage claims for individual plaintiffs as well as class action
15 allegations. (Ex. 1, Chanin decl. ¶20). On July 18, 2004, Local 10 plaintiffs filed a First
16 Amended Complaint to include additional victims of police violence as plaintiffs in the action.
17 *Id.* On August 11, 2004, the case was transferred to this Court after it was determined to be
18 related to the *Coles v. City of Oakland* action, which had been filed by *Haddad and Sherwin*
19 on the same day as Local 10 plaintiffs had filed their original Complaint. *Id.*

20 On October 1, 2003, an initial meeting was held between counsel for plaintiffs and
21 defendants to discuss a number of issues pertinent to the litigation, including issues specifically
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26 ⁴ The Local 10 legal team has also worked cooperatively with the *Coles* counsel throughout
27 the litigation, including with respect to discovery matters and during the negotiations of the
injunctive and declaratory relief settlement.

1 related to plaintiffs' injunctive relief claims. (Ex. 3, Schlosser decl. ¶¶21-24; Ex. 8, Lederman
2 decl. ¶¶6,19). During this meeting the parties agreed to commence negotiations on the crowd
3 control policies and on plaintiffs' injunctive relief claims. It was also agreed that counsel for
4 the plaintiffs would be responsible for writing an initial draft of a revised crowd control policy.
5 *Id.*

6 Intensive negotiations regarding settlement of the injunctive relief and revisions to the
7 OPD's crowd control policy were ongoing between October 1, 2003 and December 20, 2004.
8 (Ex. 3, Schlosser decl., ¶¶21-81; Ex. 8, Lederman decl. ¶¶19-46). This Court's Order
9 approving the settlement of the injunctive relief claims was filed on December 28, 2004. (Ex.
10 1, Chanin decl., Ex. A). Since that time, the parties have continued to work together on
11 implementation of the policy and the creation of training bulletins for OPD officers. (Ex. 3,
12 Schlosser decl. ¶¶82-83; Ex. 8, Lederman decl. ¶47).

13 14 15 **V. SUMMARY OF THE INJUNCTIVE RELIEF NEGOTIATIONS AND SETTLEMENT**

16 ***A. Plaintiffs' Attorneys' Roles***

17 Alan Schlosser and Rachel Lederman were designated as lead counsel for purposes of
18 negotiating with the City of Oakland on the crowd control policy. (Ex. 3, Schlosser decl., ¶5;
19 Ex. 8, Lederman decl, ¶6). James Chanin and John Burris, by virtue of their experience in
20 numerous police misconduct actions, including negotiating the non-monetary settlement in the
21 "Riders" litigation (*Delphine Allen, et al. v. City of Oakland, et al*, 00-4599 TEH), were
22 charged with the tasks of attending certain critical meetings related to the crowd control
23 policies, reviewing and commenting upon the policies and proposed revisions and lending
24 assistance to the Local 10 legal team when needed. (Ex. 1, Chanin decl. ¶22; Ex. 5, Burris
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1 decl. ¶17-18).

2 Bobbie Stein lent her expertise throughout the negotiations process, critiquing and
3 drafting revisions of the work in progress. (Ex. 6, Stein decl.¶18-22). Ms. Stein had previous
4 experience in drafting police crowd control polices, having helped to create the San Francisco
5 Police Department's Crowd Control Manual currently in use. *Id.* Mark Schlossberg, is the
6 Police Practices Director for the ACLU-NC. His involvement in the negotiations focused on
7 intelligence issues related to the OPD's surveillance of demonstrators and ILWU members.
8 (Ex. 3, Schlosser decl., ¶12).

9
10 Osha Neuman, who served on the City of Berkeley Police Review Commission for
11 many years, and who has been involved in police misconduct litigation for a large part of his
12 legal career, also significantly contributed to the process, drafting certain parts of the policy
13 that were eventually adopted. (Ex. 7, Neuman decl. ¶4, 10-12).

14 In an effort to maximize efficiency, Local 10 counsel agreed to work closely with *Coles*
15 counsel, Michael Haddad, during the negotiations and policy drafting process so that counsel
16 in both actions would achieve a result that would be acceptable to all of their clients. (Ex. 3,
17 Schlosser decl., ¶26).

18
19 ***B. Negotiations Continued for Over One Year***

20 On October 1, 2003, the City of Oakland agreed to begin negotiations with respect to
21 plaintiffs' injunctive relief claims. To that end, Local 10 counsel began reviewing the existing
22 OPD crowd control policies as well as policies from other jurisdictions, including San
23 Francisco, Seattle, Los Angeles and Minneapolis. Counsel also consulted with attorneys
24 involved in crowd control cases throughout the country and retained Jeffery Schwartz, Ph.D.,
25 a police practices expert, to assist them in making revisions to the OPD policy. (Ex. 3,
26
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1 Schlosser decl. ¶¶21-27; Ex. 8, Lederman decl. ¶¶18-24).

2 After reviewing existing OPD policies, it became immediately apparent to Local 10
3 counsel and their consultant that there were virtually no controls on OPD's use of so-called
4 "less lethal" munitions. Oakland police policies did not provide clear direction to officers when
5 confronted with peaceful, but non-compliant crowds, other than to resort to the use of "less
6 lethal" weapons and other force. (Ex. 1, Chanin decl., ¶21). Without substantial reforms, there
7 remained a serious risk that officers would continue to employ excessive force as a means of
8 crowd control in the future. *Id.*

9
10 Moreover, it was clear that despite the fact that the OPD had been involved in a
11 number of previous crowd control situations which raised red flags about its officers' use of
12 excessive force, including the Festival of the Lake litigation filed by Local 10 counsel, John
13 Burris, which resulted in both individual and supervisory liability verdicts in favor of a number
14 of plaintiffs, the OPD remained ill-equipped to handle large scale crowd control situations
15 without resorting to the use of excessive force. (*Id.*; Ex. 5, Burris decl.¶18)

16
17 By December 10, 2003, plaintiffs' counsel completed their draft of a comprehensive
18 crowd control policy. This draft was presented to defendants' counsel on December 11th. (Ex.
19 3, Schlosser decl., ¶¶29-34; Ex. 8, Lederman decl., ¶¶21-24). Later that day, OPD Chief,
20 Richard Word, announced at a City of Oakland Civilian Review Board meeting. that the OPD
21 intended to make changes to its policies and specifically stated that the OPD would no longer
22 use "less lethal" weapons for crowd control. *Id.*

23
24 Thereafter, on January 28, 2004, at the City's invitation, plaintiffs' counsel attended a
25 meeting with Chief Richard Word, OPD command staff and counsel for the City of Oakland.
26 At that time, defendants' counsel presented plaintiffs with a draft of a revised crowd control
27

1 policy that had been prepared by the OPD. (Ex. 3, Schlosser decl. ¶35; Ex. 8, Lederman decl.
2 ¶27).

3 To some extent, the OPD's draft tracked the structure of plaintiffs' December 2003
4 draft policy. It failed, however, to address a number of critical issues that had been included in
5 the plaintiffs' initial draft. (Ex. 3, Schlosser decl. ¶36). In particular, the OPD draft policy was
6 silent as to the relationship between arrests and use of force and lacked guidelines with regard
7 to when an arrest was the appropriate response rather than the use of force options. *Id.*

8
9 The draft also failed to incorporate the prohibition on the use specialty impact weapons
10 for crowd control (such as the "less lethal" weapons used during this incident) which had been
11 included in the plaintiffs' initial draft and which Chief Word had previously announced would
12 be made part of the revised policy. (Ex 3, Schlosser decl. ¶37-41).

13 Although the OPD's draft referred to many of these specialty impact weapons, it failed
14 to give any clear guidance as to when these munitions and chemical agents would be used for
15 crowd control, stating only that they would not be "indiscriminant (sic) nor used to disperse a
16 peaceful crowd." To the extent that it was intended to limit the use of such weapons, this draft
17 was also in conflict with other OPD use of force policies that appeared to authorize their use in
18 crowd control situations. *Id.* Plaintiffs' counsel communicated their concerns about the
19 OPD's proposed policy to counsel for the City. Negotiations concerning the policy continued
20 throughout the Spring of 2004. In March 2004, the parties continued to negotiate changes to
21 the OPD's crowd control policies and plaintiffs made substantial progress in obtaining their
22 recommended revisions. (*Id.* at ¶¶39-45; Ex. 8, Lederman decl. ¶28-31).

23
24
25 Notwithstanding the significant progress that had been made in drafting the revised
26 crowd control policy, there remained a number of issues upon which the parties disagreed or
27

1 where there was a need for further negotiations. These included:

- 2 (1) using less lethal weapons against people leaving the scene of unlawful activity;
- 3 (2) the use of pepper spray against a non-compliant crowd;
- 4 (3) the use of less lethal weapons against people engaged in property crimes such as vandalism and looting;
- 5 (4) the use of less lethal weapons against a crowd when it is threatening or there is violence occurring;
- 6 (5) the use of flash bangs grenades;
- 7 (6) the use of stun guns and tasers, especially against crowds at sideshows;
- 8 (7) whether jabs could be made with batons; and
- 9 (8) how the OPD would incorporate issues relating to pain compliance and passive resistance, videotaping and intelligence gathering into the final draft of the policy.

10 Negotiations, therefore, continued and a further meeting was convened on April 23,
11 2004 to discuss the areas of disagreement. (Ex. 8, Lederman decl. ¶33). Thereafter, Local 10
12 plaintiffs' counsel agreed to prepare a single working draft of the policy. Considerable time
13 was spent revising and editing the policy draft and additional time was spent conferring with
14 counsel for the *Coles* plaintiffs before the finalized draft was sent to counsel for the City of
15 Oakland on May 27, 2004. (Ex. 3, Schlosser decl. ¶¶47-58).

16 Over the Summer and Fall of 2004, the parties continued to have disagreements over
17 substantive areas of the policy, including the use of tasers, batons, aerosol O.C. spray, and the
18 handcuffing, cite release and treatment of legal observers. (Ex. 3, Schlosser decl. ¶¶59-72; Ex.
19 8, Lederman decl. ¶34-40). The City eventually withdrew their proposal to use tasers for
20 crowd control after plaintiffs' counsel provided documentation showing why these weapons
21 were totally inappropriate for crowd control. (Ex. 3, Schlosser decl. ¶¶71-72).

22 Throughout the Fall of 2004, the parties continued their negotiations over the specific
23 language in the policy and about the use of batons, pain compliance holds and passive
24 resistance to control crowds. (Ex. 8, Lederman decl. ¶¶40-46). On October 22, 2004,
25 counsel for both sides again met to discuss the policy. A finalized draft of the policy emerged
26
27

1 following this meeting. (Ex. 3, Schlosser decl. ¶¶73-78).

2 The City announced its adoption of the policy at a joint press conference on November
3 9, 2004. (Ex. 3, Schlosser decl ¶79). Speaking on behalf of the police force, a proud Chief
4 Word hailed the policy as a model for the rest of the country. *Id.*

5 When asked about the policy months later at his deposition, Chief Word acknowledged
6 that the revised policy was something that he was proud of and agreed that it was the product
7 of months of negotiations in which plaintiffs' counsel made significant contributions. (Ex. 1,
8 Chanin decl. ¶25, Exhibit E).

9
10 A Stipulation for Partial Settlement was filed on December 20, 2004. This Court filed
11 its Order approving the Stipulation on December 28, 2004. (Ex. 1, Chanin decl., Ex. A). The
12 Court not only approved the settlement, but retained jurisdiction over its enforcement. *Id.*

13 On February 7, 2005, Local 10 plaintiffs' counsel sent a written demand to defendants'
14 counsel for attorney's fees and costs incurred in connection with the injunctive relief claims.
15 Resolution of the fee issue was specifically provided for in the Court's order. (Ex. 1, Chanin
16 decl., ¶26). Although Local 10 plaintiffs' counsel made it clear that the written demand was
17 not a "take it or leave it" proposition and were amenable to compromise in an effort to save the
18 expense of litigating a formal fee motion, defendants did not counter offer. Accordingly,
19 plaintiffs had no other recourse than to bring the instant motion to recover their fees and costs
20 pursuant to the terms of the settlement agreement. *Id.*

21
22
23 **VI. SUMMARY OF BACKGROUND, EXPERIENCE, RATES
AND LODESTAR SOUGHT**

24 Local 10 plaintiffs are moving the Court for an award of attorneys' fees for the work
25 performed by their counsel in connection with the injunctive relief claims and injunctive relief
26 settlement in the lodestar sum of \$461,826.50 as set forth more fully in Appendix A, which
27

1 summarizes the time spent and hourly rates of Local 10 counsel and in the accompanying
2 declarations of the Local 10 attorneys (Ex. 1, Chanin decl., ¶¶25-31, Ex. F; Ex. 3, Schlosser decl.,
3 ¶¶6-12, Ex. B.; Ex. 5, Burris decl. ¶¶19-21, Ex. A; Ex. 6, Stein decl. ¶¶25-28, Ex. A; Ex. 7,
4 Neumann decl., ¶¶13-14, Ex. A; Ex. 8, Lederman decl. ¶¶7-8, Ex. A; Ex. 9, Houk decl. ¶¶12-21. Ex.
5 A; Ex. 10, Remar decl and billing summary.

6 In a reasonable exercise of billing judgment, Local 10 plaintiffs' counsel have also agreed to
7 a voluntary reduction of the lodestar in the amount of ten percent (10%) to account for reductions
8 typically afforded by firms to fee-paying clients and to account for any duplication or discrete billing
9 errors.⁵ *Id.* Therefore the lodestar on the merits less the ten percent billing judgment reduction
10 totals: \$415,643.85. *Id.*, Appendix A. Local 10 plaintiffs are moving for a 1.5 enhancement of the
11 merits lodestar, resulting in a total fee claim for work reasonably related to the injunctive relief
12 issues and crowd control policies in the sum of \$623,465.77. *Id.*; Appendix A.

13 Plaintiffs are also moving the Court for an award of attorneys' fees and costs for the
14 work rendered in connection with the issues related to the recovery of attorneys' fees and
15 costs. The lodestar sum of these services totals: \$80,342.50. With the voluntary ten percent
16 billing judgment reduction, the lodestar for the "fees on fees" is reduced to \$72,308.25. *Id.*
17 As described more fully below, Local 10 plaintiffs are requesting the application of a modest
18 1.1 enhancement to the "fees on fees" lodestar resulting in a "fees on fees" claim to date in the
19 amount of \$79,539.08. Local 10 plaintiffs also reserve the right to supplement this claim with
20 additional fees and costs incurred subsequent to the preparation of their moving papers.

21 Local 10 plaintiffs also move the Court for an Order awarding them the costs incurred
22 in connection with the merits of the injunctive relief claims and with respect to the instant
23 motion in the amount of \$4,971.01. (Ex. 1, Chanin decl., Ex. G; Appendix A).

24 ⁵ Such reductions are allowable where the Court, in rendering its decision on the award of
25 attorneys' fees and costs, sets forth the reasons for applying a percentage reduction for billing
26 judgment. *See, e.g., Gates v. Deukmejian*, 987 F.2d 1392, 1402 (9th Cir.1993)(Court must
27 specify reasons for adopting percentage reduction for billing judgment); *Bodely v. Thompson*
2005 U.S. Lexis 5113 (N.D.Cal 2005)(Court applied 10% reduction offered by plaintiffs in the
exercise of billing judgment).

1 In addition to the voluntary ten percent lodestar reduction proposed above, plaintiffs'
2 counsel have also exercised reasonable billing judgment because they scrutinized their time
3 records to exclude from their instant fee claim the hundreds of hours of time spent on the
4 plaintiffs' individual damage claims, even though that time is arguably related to the injunctive
5 relief issues. Local 10 counsel reserve the right to move for compensation for those fees at a
6 later time.

7 In a further exercise of reasonable billing judgment, Local 10 plaintiffs' counsel have
8 subtracted a large number of hours of work by law clerks and legal assistants, even though
9 those hours are typically billable to fee-paying clients in the San Francisco Bar Area at market
10 rates of at least \$100 per hour. Instead, counsel have apportioned those hours to the work
11 performed on the underlying merits of the individual plaintiffs' claims and reserve the right to
12 move for an award of these fees and costs at a later time.

13 **A. *Experience of Plaintiffs' Attorneys***

14 **1. *Alan Schlosser and ACLU-NC staff***

15 Alan Schlosser, who took the lead in the injunctive relief negotiations and drafting of the
16 revised crowd control policy, obtained his law degree from Harvard Law School in 1967 and was
17 admitted to the New York Bar in 1968. He was admitted to the California and Massachusetts Bars
18 in 1971 and 1973, respectively. He is admitted to practice law in the United States District Courts
19 for the Northern, Eastern, and Central Districts of California, the United States Courts of Appeals
20 for the Ninth and Second Circuits, and the United States Supreme Court. (Ex. 3, Schlosser decl.,
21 ¶1-3, Ex. A). Since 1976, Mr. Schlosser has been staff counsel for the American Civil Liberties
22 Union Foundation of Northern California, and is currently its Legal Director. *Id.*

23
24
25 Mr. Schlosser is claiming an hourly rate of \$550 for his work related to the Local 10
26 plaintiffs' injunctive relief claims and settlement. This hourly rate is consistent with San Francisco
27

1 Bay Area attorneys of similar background and experience. (Ex. 3, Schlosser decl. ¶9; Ex. 15,
2 Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶10-16; Ex. 18, Scott decl.¶¶25-37).

3 Under the direction and supervision of Mr. Schlosser, ACLU attorneys, Mark Schlossberg
4 and Julia Mass, rendered services in connection with Local 10 plaintiffs' injunctive relief. Hourly
5 rates sought for Mr. Schlosberg and Ms. Mass are \$260 and \$325, respectively. (Ex. 3, Schlosser
6 decl. ¶¶10-12). These rates are also consistent with the prevailing San Francisco Bay Area market
7 rates for attorneys of similar experience and skill. (*Id.*, Ex. 15, Streeter decl., ¶¶8-10, Ex. 11, Bien
8 decl., ¶10-16; Ex. 18, Scott decl.¶¶25-37; Ex. 17, Sobel decl. ¶¶19-20).

10 **2. Rachel Lederman**

11 Local 10 counsel, Rachel Lederman, obtained her law degree from New College School of
12 Law in 1987 and was admitted to the State Bar of California that same year. She is admitted to
13 practice in the United States District Court for the Northern Districts of California and the United
14 States Courts of Appeals for the Ninth Circuit. (Ex. 8, Lederman decl.¶¶1-2, Ex. B).

15 Ms. Lederman has significant litigation experience, including in the areas of police
16 misconduct, criminal defense and housing rights litigation. Throughout the 1980's and 1990's, Ms.
17 Lederman worked extensively on issues involving the constitutional rights of demonstrators and
18 was instrumental in setting up the National Lawyers Guild's ongoing system for providing legal
19 observers and pro bono criminal defense for demonstrators. (Ex. 8, Lederman decl., ¶¶3-4).

20 Ms. Lederman has also been a presenter on legal issues pertaining to demonstrations, police
21 misconduct and civil rights matters at continuing legal education seminars, and at the National
22 Lawyers Guild and the American Association of Immigration Lawyers national conventions. (Ex.
23 8, Lederman decl. ¶5).

24 Ms. Lederman is claiming an hourly rate of \$425 which is consistent with San Francisco
25 Bay Area market rates for attorneys of similar skill and experience. (Ex. 8, Lederman decl.¶8, Ex.
26 15, Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶10-16; Ex. 18, Scott decl.¶¶25-37; Price decl. ¶¶30-
27

1 33; Ex. 16, Vermeulen decl ¶¶4-6; Ex. 17, Sobel decl., ¶¶19-20).

2 **3. John Burris**

3 The nine Local 10, ILWU dockworker plaintiffs are represented by John L. Burris, who
4 obtained his law degree from Boalt Hall in 1973. He joined the California Bar in 1976 and the
5 Illinois Bar in 1974. Mr. Burris is admitted to practice in the United States District Courts for the
6 Northern, Eastern, and Central Districts of California, the Eastern District of Illinois, and the United
7 States Courts of Appeals for the Ninth and Seventh Circuits. (Ex. 5, Burris decl., ¶1-2).

8 Following his graduation from law school, Mr. Burris was employed as an Associate with
9 the law firm of Jenner & Block in Chicago, Illinois where he litigated and assisted in the litigation of
10 Title VII employment discrimination, criminal, anti-trust and securities cases, as well as arbitrations
11 and administrative proceedings. Subsequently, Mr. Burris became an Assistant State Attorney in
12 Cook County, Illinois, where he prosecuted over 500 criminal cases, most of them involving court
13 trials. Later, he was designated as a Special Prosecutor to handle high visibility, impact cases for
14 the West and South Side district offices. In December 1976, Mr. Burris became a Deputy District
15 Attorney with the Alameda County District Attorney's Office where he litigated numerous felony
16 jury trials. (Ex. 5, Burris decl., ¶3-4).

17 Since March 1979, Mr. Burris has been in private practice in Oakland, California. Over the
18 course of his years in private practice, Mr. Burris has been involved in hundreds of civil rights and
19 employment discrimination cases and more than 90% of his practice is devoted to civil rights and
20 police misconduct cases. (Ex. 5, Burris decl., ¶5-6). Mr. Burris has also written and lectured
21 extensively on police misconduct matters and civil rights litigation and has been the recipient of
22 numerous awards. (Ex. 5, Burris, decl., ¶¶9, 12, 14). He is a frequent commentator on both radio
23 and television. *Id.* at ¶13.

24 Mr. Burris, along with Local 10 plaintiffs' counsel, James B. Chanin and Julie M. Houk,
25 represented 119 plaintiffs who were abused at the hands of City of Oakland Police Officers known
26 as "*the Riders*" in *Delphine Allen, et al. v. City of Oakland, et al.*, U.S.D.C. No. 00-4599 TEH and
27 in the cases related thereto. The *Riders* case led the City of Oakland to agree to a non-monetary

1 settlement wherein it promised to make major reforms to the supervision and control of its police
2 officers, including reforms in the OPD's Internal Affairs Division, the monitoring of officers who are
3 the subject of repeated complaints, and the reporting and review of the use of force by members of
4 the Oakland Police Department, among other reforms. Mr. Burris, along with Mr. Chanin, have
5 continued to work closely with the Independent Monitors and the City of Oakland to ensure that
6 the reforms mandated by that agreement are fully implemented. (Ex. 5, Burris decl., ¶¶16,18; Ex. 1,
7 Chanin dec.; ¶3).

8 Mr. Burris is claiming an hourly rate of \$550 for the services related to the Local 10
9 plaintiffs' injunctive relief claims and settlement. (Ex. 5, Burris decl. ¶¶19-21). This rate is
10 consistent with the prevailing San Francisco Bay Area market rates for attorneys of similar skill and
11 experience. (*Id.*, Ex. 15, Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶10-16; Ex. 18, Scott decl.¶¶25-
12 37; Ex. 12, Price decl. ¶¶30-33).

13 **4. James B. Chanin**

14 James B. Chanin, graduated from the University of San Francisco Law School in 1977 and
15 was admitted to the California Bar the same year. Prior to that time, Mr. Chanin attended George
16 Washington University in Washington, D.C. and the University of California at Berkeley where he
17 received a B.A., an M.A. and a Ph.C. degree (Candidate in Philosophy) in history. (Ex. 1, Chanin
18 decl.,¶1-3).

19 Mr. Chanin has been in private practice since his graduation from law school and has
20 emphasized civil litigation and trial work. *Id.* A sizable portion of Mr. Chanin's practice is devoted
21 to civil rights cases involving police practices. Beginning in the early 1980's, Mr. Chanin, along
22 with his former partner, Oliver Jones, litigated numerous cases against the City of Richmond Police
23 Department during a period when the Richmond Police Department killed and injured many people.
24 He has subsequently handled a great many claims in both state and federal courts, throughout
25 California, against public entities and public employees, which have involved police practices and
26 law enforcement issues. (Ex. 1, Chanin decl., ¶3-4).

27 As noted above, Mr. Chanin worked with Mr. Burris and Ms. Houk in obtaining the non-

1 monetary settlement in the “*Riders*” litigation and monetary damage awards for the plaintiffs
2 totaling over \$10 million dollars. (Ex. 1, Chanin decl., ¶3). Mr. Chanin and Ms. Houk also
3 represented a Pelican Bay Prison inmate who was severely burned and disfigured by prison
4 employees who maliciously forced the inmate to sit in tub of boiling hot water. (Ex. 1, Chanin decl.
5 ¶3). This case was profiled on “60 Minutes” and resulted in a substantial settlement to the injured
6 inmate. *Id.*

7 Mr. Chanin has also lectured on police misconduct issues and civil litigation at continuing
8 legal education seminars and regularly lectures on civil rights and legal issues to high school
9 students. (Ex. 1, Chanin decl., ¶4).

10 Mr. Chanin is claiming an hourly rate for his services in the amount of \$525. This rate is
11 consistent with San Francisco Bar Area market rates for attorneys of comparable skill and
12 experience and with Court awards of attorneys’ fees in other cases. (Ex.1, Chanin decl., ¶¶27-34);
13 Ex. 15, Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶10-16; Ex. 18, Scott decl.¶¶25-37; Ex. 12, Price
14 decl. ¶¶30-33).

15 **5. Julie Houk**

16 For over 20 years, Local 10 counsel, Julie M. Houk, has worked with James B. Chanin,
17 both as an associate in his law office and currently as an independent contractor. Ms. Houk
18 obtained Bachelor of Arts and Master of Arts degrees from Marquette University in 1975 and 1979,
19 respectively and obtained her law degree from Golden Gate University School of Law in 1984,
20 where she was wrote for the Law Review and was an instructor in the school’s first year writing
21 and research program. (Ex. 9, Houk decl.¶¶2-3).

22 Ms. Houk was admitted to the State Bar of California in 1984 and to the Illinois State Bar
23 in 1985. She is admitted to practice in the United States District Courts for the Northern, Eastern
24 and Southern Districts of California and the United States Court of Appeals for the Ninth Circuit.
25 (Ex.9, Houk decl. ¶2).

26 Since law school, Ms. Houk has devoted a substantial amount of her legal practice to civil
27 rights matters, including litigating police misconduct, prison abuse and employment discrimination

1 cases in state and federal courts in California with Mr. Chanin's firm. (Ex. 9, Houk decl., ¶¶4-7). A
2 significant number of these cases have involved claims related to the infliction of serious injuries and
3 deaths resulting from the use of munitions by law enforcement officers. *Id.*

4 Ms. Houk, along with Mr. Chanin, has also represented other attorneys in making
5 applications for attorneys' fees and costs. Ms. Houk, along with Local 10 counsel, Bobbie Stein,
6 has been designated take the lead for Local 10 plaintiffs in connection with the preparation of the
7 instant motion for attorneys' fees and costs. (Ex. 9, Houk decl., ¶14).

8 Ms. Houk is requesting an hourly rate of \$450. This rate is consistent with San Francisco
9 Bay Area market rates for attorneys of comparable skill and experience. (Ex. 1, Chanin decl. ¶¶29-
10 30; Ex. 9, Houk decl. ¶¶15-16; Ex. 15, Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶10-16; Ex. 18,
11 Scott decl. ¶¶25-37; Ex. 12, Price decl. ¶¶30-33).

12 **6. Bobbie Stein**

13 Local 10 counsel, Bobbie Stein, obtained her law degree from the University of San
14 Francisco School of Law in 1983 and was admitted to the State Bar of California in 1984. (Ex. 6,
15 Stein decl. ¶1-2). Ms. Stein is admitted to practice in the United States District Courts for the
16 Northern District of California, the United States Courts of Appeals for the Ninth Circuit and the
17 United States District Court for the Eastern District of Wisconsin. (Ex. 6, Stein decl. ¶¶1-2).

18 Since graduating from law school in 1983, Ms. Stein has devoted a substantial amount of
19 her practice to criminal defense, both trial and appellate work, and has devoted considerable time to
20 criminal justice and civil rights issues. (Ex. 6, Stein decl. ¶¶3-10). Ms. Stein has written about
21 criminal justice and civil rights issues in newspapers and magazines and has lectured on legal issues
22 pertaining to demonstrations, police accountability and other issues in a variety of settings, including
23 MCLE training sessions. *Id.*

24 Ms. Stein has developed widely distributed training materials for activists and lawyers
25 related to demonstrations law and crowd control procedures. *Id.* From 1990-1997, Ms. Stein was a
26 full time faculty member at New College School of Law and currently serves as an adjunct
27 professor at the University of California's Boalt Hall. *Id.*

1 Along with Ms Lederman, Ms. Stein has been instrumental in setting up an ongoing system
2 for providing legal observers and pro bono criminal defense attorneys to demonstrators. Over the
3 years, Ms. Stein has devoted her skills and legal talent to representing literally thousands of people
4 arrested at demonstrations on a pro bono basis. *Id*

5 In 1989, Ms. Stein was appointed to a task force by then San Francisco Mayor, Art Agnos,
6 to rewrite the crowd control manual for the San Francisco Police Department. Ms. Stein
7 participated in this endeavor with members of the San Francisco Police Department, City Attorney's
8 Office, and representatives from the ACLU and Community United Against Violence. (Ex. 6, Stein
9 decl. ¶10).

10 Ms. Stein is claiming an hourly rate of \$450, consistent with San Francisco Bay Area
11 market rates for attorneys of comparable skill and experience. (Ex. 6, Stein decl., ¶23, Ex. 15,
12 Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶10-16; Ex. 18, Scott decl. ¶¶25-37; Ex. 12, Price decl.
13 ¶¶30-33; Ex. 16, Vermeulen decl ¶¶4-6).

14 **7. Osha Neumann**

15 Local 10 counsel, Osha Neumann was admitted to the California Bar in 1987. He is also
16 admitted to practice in the United States District Courts for the Northern Districts of
17 California. Since graduating from New College of Law in 1987, Mr. Neumann has spent the
18 majority of his time as a lawyer practicing in the areas of civil rights, and in particular, police
19 misconduct, the rights of political demonstrators, and the civil rights of the homeless. (Ex. 7,
20 Neumann decl., ¶¶1-2, Ex. A).

21 Mr. Neumann was appointed to the Berkeley Police Review Commission where he
22 served from 1984 to 1992. From 1984 to the present he has been the chairperson of
23 Community Defense Incorporated (CD Inc.), a non-profit corporation formed to provide legal
24

1 defense and education for demonstrators in civil-disobedience protests and education on legal
2 issues. C.D. Inc. is the fiscal sponsor of Copwatch, an organization devoted to monitoring the
3 police and documenting allegations of misconduct. Mr. Neumann has also conducted
4 numerous trainings for Copwatch volunteers on topics related to observing police, and the law
5 governing arrests, detentions, and the use of force by police. (Ex. 7, Neumann decl., ¶¶3-8).

6 Since 2001 Mr. Neumann has contracted with the East Bay Community Law Center, to
7 supervise and train Boalt Hall law students at the Center's Decriminalization of Poverty
8 Project (DeCOPP). (Ex. 7, Neumann decl., ¶3).

9
10 **8. Robert Remar**

11 Robert Remar, counsel for Local 10 of the ILWU, has worked at the law firm of
12 Leonard Carder LLP since 1985, becoming a partner in 1990. (Ex. 10, Remar decl. ¶¶ 1-7).
13 Mr. Remar graduated from Boalt Hall and passed the California bar in 1981. *Id.* Following his
14 graduation from law school, he worked for a few years as a prosecuting attorney with the
15 National Labor Relations Board where he investigated and prosecuted cases involving worker
16 rights. During his nearly 25 years of legal practice, he has specialized in employment and
17 federal labor law matters involving union and nonunion workers. He has also handled several
18 class actions on both the defense and Plaintiffs' side concerning employment, Civil Rights
19 claims. He has litigated in excess of 50 Federal Court lawsuits. Many of these cases also
20 involved legal issues concerning the constitutional and Civil Rights of individuals. *Id.*

21
22 **VII. ARGUMENT**

23
24 **A. *Plaintiffs are Entitled to Their Reasonable Attorneys Fees***

25 Statutory authority provides for the recovery of an award of attorney's fees in this case.
26 Under 42 U.S.C. § 1988, California Civil Code §52, subd. (b)(3) and 52.1, subd. (h), and California
27

1 Code of Civil Procedure § 1021.5, a prevailing plaintiff “should ordinarily recover an attorney’s fee
2 unless special circumstances would render such an award unjust.” *Chalmers v. City of Los Angeles*,
3 796 F.2d 1205, 1210 (9th Cir. 1986), *amended*, 808 F.2d 1373 (9th Cir. 1987)(*citing Hensley v.*
4 *Eckerhart*, 461 U.S. 424, 429, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983)). An award of attorneys’
5 fees is proper in the instant matter.

6 **1. Local 10 plaintiffs are entitled to fees and costs under 42 U.S.C. §1988**

7 Pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988, a
8 district court has the authority to award reasonable attorney's fees to a prevailing party in an action
9 brought under 42 U.S.C §1983. *City of Riverside v. Rivera*, 477 U.S. 561, 567, 91 L. Ed. 2d 466,
10 106 S. Ct. 2686 (1986). The purpose of 42 U.S.C. §1988 is to ensure that private parties are able
11 to secure effective counsel to protect rights guaranteed by federal law. *City of Riverside v. Rivera*,
12 *supra*, at 576. It is a means by which non-affluent plaintiffs can have “effective access” to the
13 courts to enforce civil rights laws. (see, *Kay v. Ehrler*, 499 U.S. 432, 436, n. 8, 111 S.Ct. 1435,
14 113 L.Ed. 486 (1991); *Newman v. Piggie Park Enterprises, Inc.* 390 U.S. 400, 401-402, 88 S.Ct.
15 964, 19 L.Ed. 2d 1263 (1968) (per curiam). A party need not prevail on all issues litigated, but
16 must succeed on at least some of the merits. *City of Riverside v. Rivera, supra*, at 570.
17
18

19 While the Supreme Court has held that a “voluntary change” in conduct due to the filing of
20 a lawsuit itself is not sufficient to confer prevailing party status for purposes of an attorney’s fee
21 award, the Court acknowledged that a "judicially sanctioned change in the legal relationship
22 between the parties" would support a fee award. *Buckhannon Bd. & Care Home, Inc. v. W. Va.*
23 *Dep't of Health & Human Res.*, 532 U.S. 598, 600-10 (2001). As evidenced by this Court’s
24 December 28, 2004 Order, there has been a judicially sanctioned change in the legal relationship
25 between the parties in this case. (Ex. 1, Chanin decl., Ex. A).
26
27

1 The Ninth Circuit has repeatedly held that a party achieves “prevailing party” status when it
2 has obtained an injunctive and/or a legally enforceable settlement. *See, e.g., Tipton-Whittingham v.*
3 *City of Los Angeles*, 316 F.3d 1058 (9th Cir. 2003)(Under federal law, both a preliminary injunction
4 and an enforceable settlement agreement carry the "judicial imprimatur" necessary to satisfy
5 Buckhannon.); *Watson v. County of Riverside*, 300 F.3d 1092, 1096 (9th Cir. 2002)(Prevailing
6 party status for plaintiff who obtained preliminary injunction notwithstanding the fact that the case
7 was later rendered moot); *Barrios v. California Interscholastic Fed'n*, 277 F.3d 1128, 1134 n.5
8 (9th Cir. 2002) *cert. denied*, 154 L. Ed. 2d 28, 123 S. Ct. 98 (2002)(Plaintiff entitled to attorneys'
9 fees under the ADA where plaintiffs entered into a legally enforceable settlement agreement). There
10 can be no question in the instant case that Local 10 plaintiffs are a prevailing party.
11

12 The legally enforceable injunctive relief obtained by plaintiffs included substantive reforms
13 to the OPD’s crowd control policy. Indeed, the Court recognized plaintiffs prevailing party status
14 and their right to attorneys fees in its order approving the partial settlement, which specifically
15 provided for “attorney’s fees and costs related to this partial settlement.” (Ex. 1, Chanin decl., Ex.
16 A).
17

18 ***2. Local 10 plaintiffs are entitled to fees and costs under***
19 ***California Code of Civil Procedure §1021.5***

20 The Local 10 plaintiffs have alleged claims for relief in their Complaint under both federal
21 and California law. California Code of Civil Procedure §1021.5 is referred to as the California
22 "private attorney general statute." *Graham v. Daimler Chrysler Corporation* (2005) 34 Cal. 4th
23 553, 565. Under this section, the court may award attorney fees to a “successful party” in any action
24 that has resulted in the enforcement of an important right affecting the public interest where (a) a
25 significant benefit has been conferred on the general public or a large class of persons, (b) the
26

1 necessity and financial burden of private enforcement are such as to make the award appropriate,
 2 and (c) such fees should not in the interest of fairness be paid out of the recovery to the party. *Id.*;
 3 *Beasley v. Wells Fargo Bank* (1991) 235 Cal. App. 3d 1407, 1413.

4 The private attorney general doctrine rests on the assumption that "without some
 5 mechanism authorizing the award of attorney's fees, private actions to enforce such important public
 6 policies will as a practical matter frequently be infeasible." *Woodland Hills Residents Association v.*
 7 *City Council* (1979) 23 Cal. 3d 917, 933. "A central function is to 'call public officials to account
 8 and to insist that they enforce the law'." *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 632 (*Serrano IV*).
 9 Under §1021.5, plaintiffs are considered a "prevailing parties" when the lawsuit was a catalyst
 10 motivating defendants to modify their behavior or to provide the primary relief sought. *Graham,*
 11 *supra*, at 566-567. In *Graham*, the Court held that a "successful party" is one who vindicates an
 12 important right by activating defendants to modify their behavior. *Graham, supra*, at 567.

13 In this case, Local 10 plaintiffs have clearly met the criteria for a fee award under §1021.5.
 14 Plaintiffs have acted as private enforcers, vindicating important civil rights. This case and the result
 15 obtained garnered extensive media attention because of its significance. Certainly the injunctive
 16 relief obtained will inure to the benefit of the general public. (Ex. 16, Vermeulen decl. ¶7, Ex. 14,
 17 Graf decl.¶¶6-8, Ex. 13, Friedman decl. ¶¶5-6; Scott decl. ¶¶23). The necessity and burden of
 18 private enforcement make a fee award appropriate in this case. Furthermore and it would be unfair
 19 to take the fees and costs from the recovery of individual Local 10 plaintiffs, who were injured
 20 because of the OPD's flawed policies.
 21
 22
 23

24 **3. Local 10 plaintiffs are entitled to an award of attorneys fees and costs under**
 25 **California Civil Code Sections 52 and 52.1**

26 Local 10 plaintiffs are also entitled to recover their reasonable attorneys fees and costs
 27
 28

1 because they prevailed on their injunctive relief claims under California Civil Code §52.1.

2 California Civil Code Section 52.1(b) provides, in pertinent part that:

3 “Any individual whose exercise or enjoyment of rights secured by the Constitution or
4 laws of the United States, or of rights secured by the Constitution or laws of this state,
5 has been interfered with, or attempted to be interfered with, as described in subdivision (a),
6 may institute and prosecute in his or her own name and on his or her own behalf a civil
7 action for damages, including, but not limited to, damages under Section 52, injunctive
8 relief, and other appropriate equitable relief to protect the peaceable exercise or
9 enjoyment of the right or rights secured.”

10 Section 52.1(h) further provides that in addition to any damages, injunction or equitable
11 relief, the court may award the plaintiff its reasonable attorneys fees in an action brought pursuant to
12 §52.1(b)

13 By obtaining the legally enforceable injunctive relief settlement which protects the peaceable
14 exercise and enjoyment of their Constitutional rights, Local 10 plaintiffs are a prevailing party under
15 California Civil Code §52 and are entitled an award of their reasonable attorneys fees and costs
16 pursuant to California Civil Code §52.1.

17 **B. Calculation of The Lodestar**

18 Once a court determines that party should be awarded attorneys fees under §1988, it must
19 determine what fees are reasonable by calculating the "lodestar." *Jordan v. Multnomah County*, 815
20 F.2d 1258, 1262 (9th Cir. 1987). The lodestar method is also the appropriate method for calculating
21 recoverable attorneys' fees under California law. *Press v. Lucky Stores, Inc.* (1983) 34 Cal. 3d 311,
22 321-25, *Serrano v. Priest* (Serrano III) (1977) 20 Cal. 3d 25, 48-49.

23 The lodestar is determined by “multiplying the number of hours reasonably expended on
24 litigation by a reasonable hourly rate.” *See, e.g., Chalmers, supra*, 796 F.2d at 1210; *Schwartz v.*
25 *Health & Human Serv.*, 73 F.3d 895, 901 (9th Cir. 1995); *Keith v. Volpe*, 833 F.2d 850, 859 (9th
26 Cir. 1987). In calculating the lodestar, the court must determine both a reasonable number of hours

1 and a reasonable hourly rate for each attorney. *Chalmers, supra*, 796 F.2d at 1210.

2 Several factors must be considered in the court's determination of a reasonable hourly rate,
3 including, the experience, skill and reputation of the applicant and the prevailing rate in the
4 community⁶ for similar work performed by attorneys of comparable skill, experience and reputation.
5 *Id.* at 1210-11. There is a "strong presumption" that the resulting lodestar figure constitutes the
6 reasonable fee. *Jordan, supra*, 815 F.2d at 1262; *City of Riverside v. Rivera, supra*, 477 U.S. 561,
7 568 (1986).

8 The court should not exclude any hours from the lodestar amount unless it can be shown
9 that they were not reasonably expended because they are excessive, redundant, or otherwise
10 unnecessary. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).

11
12 **1. Plaintiffs hourly rates are reasonable**

13 Attorneys' fees are to be calculated according to the current prevailing market rate in the
14 relevant legal community. *Missouri v. Jenkins*, 491 U.S. 274, 296 (1989), *Serrano v. Unruh*
15 (*Serrano IV*) (1982) 32 Cal.3d 621. The rate should be "in line with those prevailing in the
16 community for similar services by lawyers of reasonably comparable skill, experience and
17 reputation." *Blum v. Stenson*, 465 U.S. 886, 896, n. 11 (1984). *Jordan v. Multnomah County*,
18 *supra*, 815 F.2d at 1262 ("The prevailing market rate in the community is indicative of a reasonable
19 hourly rate"), *Chalmers v. City of Los Angeles, supra*, 796 F.2d at 1210-11.

20 The relevant community for purposes of determining the prevailing market rate in this case
21 is San Francisco since that is the forum in which the district court sits. *Davis v. Mason County*, 927
22 F.2d 1473, 1488 (9th Cir. 1991), *cert. denied*, 502 U.S. 899 (1991). The Ninth Circuit has held
23

24
25
26 ⁶ The relevant community for purposes of determining the prevailing market rates is generally the
27 forum in which the district court sits. *See, e.g., Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir.
28 1997), *cert. denied*, 525 U.S. 827 (1998).

1 that affidavits of plaintiffs' attorneys, affidavits of other attorneys concerning prevailing fees in the
2 community, as well as rate determinations in other cases, may constitute satisfactory evidence of the
3 prevailing market rate. *Chalmers, supra*, 796 F.2d at 1214.

4 The plaintiffs have satisfied their burden of showing that the hourly rates requested by
5 counsel are in line with the prevailing market rates for the San Francisco Bay Area. (See, e.g., Ex.
6 Ex. 15, Streeter decl., ¶¶8-10, Ex. 11, Bien decl., ¶¶10-16; Ex. 18, Scott decl. ¶¶25-37, Ex. A; Ex.
7 17, Sobel decl. ¶¶19-20). Therefore, Plaintiffs request that the Court award fees at the hourly rates
8 requested in this Motion.
9

10 **2. The number of hours claimed is reasonable**

11 Under both Federal and California law, counsel for the prevailing party should be paid for
12 all time reasonably expended. *Blanchard v. Bergeron*, 489 U.S. 87, 91 (1989), *Serrano v. Unruh*
13 (*Serrano IV*) (1982) 32 Cal. 3d 621, 639, *Stokus v. Marsh* (1990) 217 Cal. App. 3d 647, 654-56,
14 *Wallace v. Consumers Coop. of Berkeley* (1985) 170 Cal. App. 3d 836, 846-49. Prevailing parties
15 are entitled to recover reasonable attorneys' fees for every item of service that would have been
16 undertaken by a reasonable and prudent lawyer to advance or protect his client's interest. *Hensley*
17 *v. Eckerhart*, 461 U.S. at 435; (*Serrano IV*), 32 Cal. 3d at 639. Counsel's travel time is
18 compensable, as are expenses for law clerk, paralegal and secretarial services. *Barjon, supra*, *Guinn*
19 *v. Dotson* (1994) 23 Cal. App. 4th 262, 268-70.

20 Local 10 plaintiffs anticipate that the defense will argue that their hours are unreasonable
21 because they exceed the number of hours claimed by *Coles* counsel in the related case. This,
22 however, is an untenable position in light of the differences inherent in the representation undertaken
23 by Local 10 counsel and the lead role that Mr. Schlosser and Ms. Lederman took in developing the
24 new crowd control policy.

25 As has been discussed above and in the attached declarations, Mr. Schlosser and Ms.
26 Lederman were designated by the Local 10 team as lead counsel for purposes of drafting and
27 negotiating the policy. Defense counsel and *Coles* counsel, however, also vested Mr. Schlosser

1 with primary drafting responsibilities. (Ex. 3, Schlosser decl., ¶26) Local 10 counsel provided
2 defendants' counsel with an initial draft proposal in December 2003. (Ex. 3, Schlosser decl. ¶¶27-
3 33) Although the OPD prepared a draft document, all parties ultimately worked to revise existing
4 OPD policies from a single draft document prepared by Local 10 counsel. (Ex. 3, Schlosser
5 decl. ¶¶53-78). The many hours that Local 10 counsel, and in particular, Mr. Schlosser, spent
6 researching, drafting and communicating with co-counsel must be figured into the equation when
7 calculating reasonable fees.

8 Furthermore, Local 10 plaintiffs represent a wide spectrum of injuries and interests. In
9 addition to the union and demonstrators, some of the 52 plaintiffs were legal observers,
10 videographers, union members, arrestees, and members of groups that regularly plan
11 demonstrations in Oakland. The interests of all of these individuals and groups had to be taken into
12 account when negotiating the policy with the City of Oakland. This meant interviewing a
13 considerable number of people, reviewing hours of videotape and hundreds of pages of documents.

14 Local 10 counsel spent a great deal of time investigating the events surrounding each of the
15 plaintiffs' unique circumstances to assess whether they had an actionable claim, the type of
16 munitions or other force that was employed against them (i.e., motorcycles, batons, "less lethal"
17 munitions or other force), the circumstances under which the force was used and by whom, the
18 absence of justification for the use of force and other issues which were directly and indisputably
19 related to the injunctive relief claims. Plaintiffs' counsel had to investigate the case fully in order
20 to be able to understand the flaws in the OPD's policies and craft remedial revisions.

21 Although many attorneys worked on this policy in some capacity, there is nothing
22 inherently unreasonable about a client having multiple attorneys. (See, e.g., *Bodely v.*
23 *Thompson, supra*, 2005 U.S. Lexis 5113). For that reason, a reduction for redundant hours
24 "is warranted only if the attorneys are unreasonably doing the same work. An award for time
25 spent by two or more attorneys is proper as long as it reflects the distinct contribution of each
26 lawyer to the case and the customary practice of multiple-lawyer litigation." *Johnson v.*
27 *University College of University of Alabama in Birmingham*, 706 F2d 1205, 1208 (11th Cir.

1 1983).

2 The association of counsel was created in this case in an effort to conserve attorneys' fees
3 and costs. Therefore plaintiffs should not be penalized by denying them reasonable attorneys fees
4 for work done on this case when each could have brought multiple, separate actions and have
5 generated more attorneys' fees and costs individually.

6 Moreover, the fact remains that different attorneys represent specific interests in the
7 litigation. Specifically, Mr. Burris represents nine injured dockworkers, Mr. Remar represents the
8 union local, the ACLU-NC counsel are primarily involved in the injunctive and declaratory relief
9 issues and the remaining counsel are collectively handling the remaining 41 individual plaintiffs.
10 Since the members of the legal team have specific interests that they must protect, it is not
11 unreasonable that multiple attorneys had a role in the negotiation and drafting of the crowd control
12 policy to ensure that the interests of their individual clients were protected.

13 Further justification for the number of attorneys who worked on this policy comes from the
14 sheer magnitude of the work required in a multi-plaintiff case of this nature and the complexity of
15 the issues involved in creating a crowd control policy that at once respects the rights of the
16 demonstrators and bystanders and allows for proper police enforcement. Plaintiffs needed
17 specialized skills in a number of areas including civil rights law, police practices, police misconduct,
18 criminal law, crowd control, and knowledge of chemical agents and other so called "less lethal"
19 munitions. Each attorney on the litigation team brought a unique perspective to the negotiations.

20 Local 10's litigation team was structured to maximize resources and efficiency and minimize
21 duplication of efforts. Alan Schlosser did the primary drafting of the policy and he and Rachel
22 Lederman attended negotiation meetings with defendants' counsel. A great deal of Mr. Schlosser's
23 time related to policy negotiations entailed consultations with co-counsel and preparation of
24 memos outlining the ongoing process which were communicated largely through emails. (Ex.
25 3, Schlosser decl). Because all the attorneys involved had individualized knowledge and
26 experience which was germane to the injunctive relief issues, their contributions were
27 invaluable to the negotiation process and to the development of the crowd control policy that

28

1 was ultimately adopted by the OPD. In the end, the collaborative efforts of the Local 10 legal
 2 team led them to obtain an excellent result, not only on behalf of the individual plaintiffs, but
 3 for the general public. The hours incurred by them in connection with their successful
 4 resolution of the injunctive relief claims are reasonable given the magnitude of the underlying
 5 incident and the complex technical and legal issues involved in crafting a crowd control policy
 6 which will be used by a large, metropolitan police department for years to come. (See, e.g.,
 7 Ex. 17, Sobel decl., 9-14; Ex. 13, Friedman decl. ¶¶5-6; Ex. 14, Graf decl. ¶¶ 7-8; Ex. 16,
 8 Vermeulen decl ¶¶6-7).

9 Therefore, the hours claimed by Plaintiffs for work which resulted in the successful and
 10 important injunctive relief settlement are reasonable, and plaintiffs attorneys should be fully
 11 compensated.

12 ***C. The Court Has the Discretion to Enhance the Lodestar under California Law***

13 ***1. Local 10 Plaintiffs' Request A 1.5 Lodestar Enhancement***

14 The Court has considerable discretion in determining whether to award an enhancement, or
 15 multiplier of the lodestar. Factors for the court's consideration include: (1) the risk, or contingent
 16 nature of the fee award; (2) The undesirability of the case; (3) the novelty, difficulty and complexity
 17 of the issues presented and the skill displayed by counsel; (4) the importance of the litigation and the
 18 results obtained; (5) the public service element of the case; and (6) the delay in receipt of fees.⁷

19 Enhancements in the range of 1.5 to 2.0 are not unusual. *See, e.g., Oberfelder v. City of*
 20 *Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002)(Enhancement of 1.5); *Mitchell v.*
 21 *Bankfirst*, 2003 U.S. Dist. LEXIS 3091 (N.D. Cal. 2003)(Enhancement of 1.9); *Crommie v. Public*

22 ⁷ *See, e.g., Serrano III, supra*, 20 Cal. 3d at 49; *Ketchum v. Moses* (2001) 24 Cal. 4th 1122;
 23 *Graham*, 34 Cal. 4th 581-82, *Beasley*, 235 Cal. App. 3d at 1413; *Raiders V.* 203 Cal. App. 3d at
 24 82-85; *Kern River Public Access Comm. v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205,
 25 1227-29; *Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal. App.
 26 3d 241, 251; *Crommie v. State of California Public Utilities Comm'n*, 840 F. Supp. 719, 725,
 27 *reversed in part on other grounds, sub nom, Mangold v. California Public Utilities Comm'n*, 67
 28 F.3d 1470 (9th Cir. 1995)(applying California law and reciting factors);

1 *Utilities Comm.*, 840 F. Supp. 719, 725-26 (N.D. Cal. 1994), *aff'd in part and remanded sub nom*,
2 *Mangold v. California Pub. Utils. Comm'n*, 67 F.3d 1470 (enhancement of 2.0); *City of Oakland v.*
3 *Oakland Raiders (Raiders V)* (1988) 203 Cal. App. 3d 78, 82-85 (Enhancement of approximately
4 2.3); *Coalition for Los Angeles County Planning* (1977) 76 Cal. App. 3d 241, 251 (Enhancement
5 of more than 2.0); *Downey Cares v. Downey Community Development Com.* (1987) 196 Cal. App.
6 3d 983, 995 (Enhancement of 1.5). In this case, all factors support a 1.5 enhancement of the
7 lodestar.

8 **2. Risk assumed by counsel**

9 In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1138, the California Supreme Court
10 recognized that the lodestar reflects the general local hourly rate for a fee-bearing case where
11 counsel bills the client and is reasonably assured of receiving payment for the services rendered.
12 The Court in *Ketchum* recognized that the lodestar sum may be enhanced in cases such as the
13 instant one, to account for the risk that the attorney will not receive payment if the client does not
14 prevail. The Court recognized that the enhancement of the lodestar constitutes “earned
15 compensation,” rather than a windfall, because it is neither unexpected nor fortuitous since it is
16 intended to approximate market-level compensation which typically includes a premium for the risk
17 of nonpayment or delay in payment of attorney fees. *Id.*

18 In *Oberfelder, supra*, the Court noted that civil rights cases, particularly those involving
19 allegations of police misconduct, “involve more risk than the contingency of recovery because their
20 enforcement often challenges established policy and practice and upholds individual rights in the
21 face of law enforcement activity.” This is just such a case.

22 Plaintiffs counsel represent a large number of people who where exercising their First
23 Amendment right to free exercise of speech and association by attending a demonstration opposing
24 the war in Iraq. The political nature of the underlying event, where many potential jurors are likely
25 to have pre-existing opinions about the Iraq war which may significantly differ from the viewpoints
26 expressed by the plaintiffs, makes this case a particularly risky endeavor for counsel.

27 Furthermore, while some of the Local 10 plaintiffs sustained very serious and life altering

1 injuries, others were less seriously injured or incurred little or no medical expenses as a result of
2 their injuries. This fact also makes the potential for a substantial damage award even more
3 uncertain.

4 The facts of the instant case may also present difficult questions for jurors who might be
5 inclined to believe that police officers always act within the scope of their employment even in the
6 face of evidence of excessive force. This reality also makes any award for damages uncertain. Due
7 to the extensive nature of the underlying events and the large number of plaintiffs, Local 10 counsel
8 were required to undertake a time-consuming and expensive investigation without regard for
9 whether they would be paid for their services or reimbursed for their costs. Additionally, there was
10 no guarantee that Local 10 plaintiffs would prevail on their injunctive relief claims since such relief is
11 generally rare in police misconduct litigation. (Ex. 18, Scott decl¶¶16-20; Ex. 17, Sobel decl¶¶14-
12 18).

13 Given the substantial risk undertaken by Local 10 counsel that they would never be
14 compensated for their fees or costs unless the plaintiffs prevailed on at least some of their claims in
15 the litigation, they respectfully submit that a 1.5 enhancement of the lodestar is reasonable.

16 ***3. The importance of the litigation and results obtained served the greater public***
17 ***interest.***

18 The public service element of the case is also a factor to be considered when determining
19 whether to include a multiplier in a fee award. *See, e.g., Coalition for Los Angeles County*
20 *Planning*, 76 Cal. App. 3d at 251; *Crommie*, 840 F. Supp. at 722-23. The injunctive relief
21 settlement in this case not only conferred a benefit to the individual plaintiffs, but to the public at
22 large. Veteran civil rights attorneys have applauded the settlement and the resultant crowd control
23 policy as an excellent victory. (See, e.g., Ex. 11, Bien decl., Ex. 13, Friedman decl., Ex. 14, Graf
24 decl., Ex. 16, Vermeulen decl, Ex. 17, Sobel decl., Ex. 18, Scott decl) The public service aspect of
25 this case is underscored by Chief Word's acknowledgement that the revised crowd control policy is
26 not only something he is proud of personally, but that he hoped it would serve as model for other
27 police departments nationwide. In fact, the new OPD policy has already been used as a model for

1 negotiating crowd control policies in other cities. (Ex. 13, Friedman decl ¶5).

2 Wide spread media attention to the case and the adoption of the new policy further
3 evidences the considerable interest to the public at large. The importance of the litigation and the
4 benefit inured to the public because of the new crowd control policy supports the lodestar
5 enhancement.

6 ***4. Delay in the receipt of fees and undesirability of the case.***

7 Another factor to be considered in enhancing the lodestar is the delay in the receipt of fees.
8 *See, e.g., Raiders V*, 203 Cal. App. 3d at 82-83 (enhancement of more than 2.3 based in part on
9 "deferral of payment of counsel's fees" in eminent domain case). Plaintiffs' counsel have tirelessly
10 pursued this litigation for more than two years, spending more than one year on the negotiations for
11 the injunctive relief settlement and revisions to the OPD crowd control policy. The long wait for
12 compensation is a deterrent to attorneys taking these cases unless there is a mechanism to
13 compensate them for that wait.

14 Moreover, cases such as the instant one are undesirable to many attorneys. Police
15 misconduct cases are very difficult and unattractive cases. They are inherently difficult to litigate
16 because of the complexity and the difficulty in establishing liability. Juries are often reluctant to
17 award high damages against public entities and law enforcement officers. Where, as here, the case
18 is patently political, many jurors' views on questions of liability will likely be clouded by their own
19 political views. (Ex. 17, Sobel decl, supra, Ex. 18, Scott decl., supra)

20 These are an important factors militating in favor of enhancement in this case. Therefore,
21 Local 10 plaintiffs respectfully request that the Court grant their request for a 1.5 lodestar
22 enhancement.

23 ***D. Plaintiffs Are Entitled To Recover Attorneys' Fees For Services Rendered***
24 ***In Connection With Efforts To Obtain An Award Of Fees And Expenses***

25 In the Ninth Circuit, §1988 attorneys' fees (i.e., "fees on fees") are ordinarily available to
26 compensate attorneys for the successful litigation of attorneys' fee applications. *Barlow-Gresham*
27 *Union High School Dist. v. Mitchell*, 940 F.2d 1280, 1286 (9th Cir. 1991), *Clark v. City of Los*

1 Angeles, 803 F.2d 987, 992 (9th Cir. 1986)(citing, *In re Nucorp Energy, Inc.*, 764 F.2d 655 (9th
 2 Cir. 1985)), *Harris v. McCarthy*, 790 F.2d 753, 758-59 (9th Cir. 1986), *Jordan*, 815 F.2d at 1264,
 3 *Kinney v. International Brotherhood of Electrical Workers*, 939 F.2d 690, 692-95 (9th Cir. 1991).
 4 Under California law, the fees incurred in successfully securing awards of attorneys' fees and costs
 5 are recoverable and are also subject to enhancement of the lodestar. *Downey Cares v. Downey*
 6 *Community Development Comm.* (1987) 196 Cal. App. 3d 983, 997-98, *Mangold v. California*
 7 *Public Utilities Comm'n*, 67 F.3d 1470, 1479 (9th Cir. 1995) (applying California law).

8 As set forth on Appendix A, the lodestar for the Local 10 plaintiff's "fees on fees" claim is
 9 in the sum of \$80,342.50. For the same reasons as stated in their fee claim on the merits, Local 10
 10 plaintiffs are voluntarily reducing the lodestar by 10 percent in an exercise of reasonable billing
 11 judgment, resulting in an adjusted lodestar in the sum of \$72,308.25. Local 10 plaintiffs respectfully
 12 move the Court for an Order awarding them a fully compensable fee for the work performed in
 13 connection with their efforts to obtain the award of attorneys' fees as set forth herein.

14 **1. Plaintiffs request a 1.1 lodestar enhancement for work on the fee motion**

15 In *Graham, supra*, the California Supreme Court reaffirmed that the Court has discretion to
 16 award a lodestar enhancement to the fees incurred by counsel for work performed in connection
 17 with a fee motion, albeit at a lower rate than for an enhancement awarded on the underlying merits,
 18 due to the contingent risk factor. Therefore, Local 10 plaintiffs respectfully move the Court for a
 19 1.1 lodestar enhancement on the fees incurred in connection with the instant motion, resulting in a
 20 total "fees on fees" claim in the amount of \$79,539.08. See, Appendix A.

21 **E. Plaintiffs Are Entitled To Reimbursement Of Out Of Pocket Costs**

22 A reasonable attorneys' fee under 42 U.S.C. §1988 includes reimbursement of out-of-
 23 pocket costs. *Missouri v. Jenkins, supra*, at 289. Under Civil Code §1021.5, a prevailing party
 24 may also be awarded "expert witness fees and other nonrecoverable expenses incurred by counsel"
 25 if "they represent expenses ordinarily billed a client and are not included in the overhead component
 26 of counsel's hourly rate." *Beasley*, 235 Cal. App. 3d 1421-22. Plaintiffs therefore seek
 27 compensation for such expenses in the amount of \$4,971.01. (Ex. 1, Chanin decl., Ex. G).

1

2

VIII. CONCLUSION

3 Local 10 plaintiffs achieved an excellent result in this litigation in obtaining the settlement of
4 the injunctive relief claims. The amount of time spent on the policy included much more than mere
5 negotiations with defendants. The new policy was the result of intense analysis, research, and
6 skillful drafting. Due to the number of plaintiffs and various interests involved, the case was more
7 complicated than one in which only one plaintiff seeks relief. The importance of this policy cannot
8 be underestimated. Oakland's new crowd policy will not only benefit the residents of Oakland, but
9 will benefit a much broader community. The policy has already been circulated to attorneys in other
10 cities is being used as a model for crowd control policies throughout the country.

11

12 Local 10 plaintiffs are clearly prevailing parties under both federal and state law and they
13 should receive a fully compensatory award of their reasonable costs and fees for their efforts in
14 obtaining this result. Local 10 plaintiffs respectfully request that the Court grant their motion for
15 reasonable attorneys fees and costs as set forth herein.

16

17 Dated: May 27, 2005

18

19 _____/S/ _____
BOBBIE STEIN
Attorney for Local 10 Plaintiffs

20

21 _____/S/ _____
JULIE M. HOUK
Attorney for Local 10 Plaintiffs

APPENDIX A

CALCULATION OF THE LODESTAR ON THE MERITS

ATTORNEY	YEAR ADMITTED	HOURS	HOURLY RATE	LODESTAR
Alan Schlosser	1968	259.9	\$550	\$142,945.00
John L. Burris	1973	68	\$550	\$ 37,400.00
James B. Chanin	1977	74.8	\$525	\$ 39,270.00
Robert Remar	1981	11.2	\$475	\$ 5,320.00
Julie M. Houk	1984	29.3	\$450	\$ 13,185.00
Bobbie Stein	1984	82	\$450	\$ 36,900.00
Rachel Lederman	1987	349.9	\$425	\$148,707.50
Osha Neumann	1987	66	\$425	\$ 28,050.00
Julia Mass	1996	14.6	\$325	\$ 4,745.00
Mark Schlosberg	2000	20.4	\$260	\$ 5,304.00
Total Merits Lodestar				\$461,826.50
Lodestar Less Ten Percent Reduction for Billing Judgment				\$415, 643.85
Total Adjusted Lodestar + 1.5 Enhancement				\$623,465.77

CALCULATION OF THE LODESTAR FOR FEES WORK

ATTORNEY	YEAR ADMITTED	HOURS	HOURLY RATE	LODESTAR
Alan Schlosser	1968	28.3	\$550	\$15,565.00
Julie M. Houk	1984	48.8	\$450	\$21,960.00
Bobbie Stein	1984	95.15	\$450	\$42,817.50
Total Fees Lodestar				\$80,342.50
Lodestar Less Ten Percent Reduction for Billing Judgment				\$72,308.25
Total Adjusted Lodestar + 1.1 Enhancement				\$79,539.08

TOTAL FEE CLAIM CALCULATION

Adjusted Lodestar + 1.5 Enhancement on the Merits	\$623,465.77
Adjusted Lodestar + 1.1 Enhancement on the Fees Work	\$ 79,539.08
Costs and Expenses	\$ 4,971.01
Total Claim for Attorneys' Fees and Costs	\$707,975.86