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17 **DISTRICT COURT OF GUAM**
18 **TERRITORY OF GUAM**

19 REA MIALIZA O. PAESTE, *et al.*,

20 Plaintiffs,

21 vs.

22 GOVERNMENT OF GUAM, *et al.*,

23 Defendants.

CIVIL CASE NO. 11-00008

**PLAINTIFFS' SUPPLEMENTAL MOTION
FOR ATTORNEY'S FEES AND COSTS**

1 Plaintiffs Jeffrey and Rea Paeste and Glenn and Sharon Zapanta respectfully move under Federal
2 Rule of Civil Procedure 54 for an order awarding attorney's fees and costs pursuant to 42 U.S.C. § 1988
3 for the post-judgment, non-appellate services rendered by Class Counsel. In support of this motion,
4 Plaintiffs submit this memorandum of points and authorities as well as the declarations of Daniel C.
5 Girard ("Girard Decl.") and Ignacio C. Aguigui ("Aguigui Decl.") and attached exhibits.

6 **I. INTRODUCTION**

7 Plaintiffs brought this class action in 2011 alleging that the Government of Guam and three of its
8 officials had violated federal law in their administration of income tax refunds on Guam. After nearly
9 two years of litigation, this Court entered summary judgment in full in Plaintiffs' favor and issued a
10 permanent injunction against Defendants. (Doc. Nos. 196, 197). The Court went on to award Plaintiffs
11 attorney's fees and costs under 42 U.S.C. § 1988. (Doc. Nos. 237, 268). Defendants filed a series of
12 appeals, challenging everything from this Court's jurisdiction to hear the case to its awards of fees and
13 costs. Recently, the Ninth Circuit rejected Defendants' arguments, affirming this Court's rulings in all
14 respects. (Doc. Nos. 287, 288).

15 By separate motion, Plaintiffs are seeking reimbursement of their reasonable attorney's fees and
16 costs in connection with their efforts on appeal. (Doc. No. 297.) Through the instant motion, on the
17 other hand, Plaintiffs ask the Court to award them attorneys' fees and costs for their various non-
18 appellate post-judgment efforts. As set forth in greater detail below, Plaintiffs have been compelled to
19 devote considerable time and resources following the Court's entry of judgment. In addition to their
20 efforts monitoring Defendants' compliance with the Court's injunction, for example, Plaintiffs were
21 forced to spend considerable time and effort litigating issues tied to attorney's fees and costs. For
22 instance, Plaintiffs filed a bill of costs at the Court's direction in December of 2013, which Defendants
23 vigorously opposed before the Clerk of Court and then before this Court, (Doc. Nos. 243, 249),
24 requiring Plaintiffs to file a memorandum in response to Defendants' objections before the Clerk, a
25 motion to review the Clerk's award, and then a reply brief on the same topic before this Court. (Doc.
26 Nos. 245, 248, 250). In a similar vein, after this Court awarded Plaintiffs' attorney's fees and costs,
27 Defendants refused to pay any of them and then argued this Court could not force payment, requiring
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1 Plaintiffs to file a request for writ of execution, followed by three related briefs as Defendants opposed
2 the writ and separately sought a stay. (Doc. Nos. 252, 255, 265, 295).

3 Ultimately Defendants' opposition efforts have been largely unsuccessful—Plaintiffs were
4 awarded most of their sought-after costs and the Court granted the requested writ of execution. But in
5 each instance Plaintiffs have had to continue to devote time and resources for which they are entitled to
6 reimbursement under section 1988. With Defendants' appeals now resolved, and there being ostensibly
7 little or no further litigation required, Plaintiffs seek an award of the fees and costs they have reasonably
8 incurred over the past 33 months.

9 **II. LAW AND ARGUMENT**

10 **A. Plaintiffs Are Entitled to Attorney's Fees for Their Post-Judgment Efforts.**

11 Prevailing plaintiffs in a section 1983 case are entitled to recover reasonable attorney's fees. 42
12 U.S.C. § 1988(b). The Court may award the prevailing party reasonable attorney's fees and costs for
13 post-judgment work that is "'useful' and of a type 'ordinarily necessary' to secure the litigation's final
14 result." *Stewart v. Gates*, 987 F.2d 1450, 1452 (9th Cir. 1993) (quoting *Pennsylvania v. Delaware*
15 *Valley Citizens' Council*, 478 U.S. 546, 561 (1986)). If "fees were barred for post-judgment monitoring
16 and other enforcement activities, the purpose of section 1988 would be thwarted: Services devoted to
17 reasonable monitoring of the court's decrees, both to insure full compliance and to ensure that the plan is
18 indeed working . . . are compensable services. They are essential to the long-term success of the
19 plaintiff's suit." *Keith v. Volpe*, 643 F. Supp. 37, 42 (C.D. Cal. 1985), *aff'd*, 833 F.2d 850 (9th Cir. 1987)
20 (internal citations and quotation marks omitted).

21 **B. Plaintiffs Should Be Paid a Lodestar-Based Fee of \$ 197,185.00.**

22 In section 1988 cases, courts determine a reasonable attorney's fee by using the lodestar method,
23 which multiplies the number of hours reasonably expended on the litigation by a reasonable hourly rate.
24 *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135 (9th Cir. 2012). The two firms that served as
25 Class Counsel in this litigation, Girard Gibbs LLP and The Law Offices of Ignacio Cruz Aguigui¹, have

26 _____
27 ¹ The Court originally appointed Girard Gibbs LLP and Lujan, Aguigui & Perez, LLP to serve as class
28 counsel. On May 7, 2015, the Court amended its order to appoint The Law Offices of Ignacio Cruz
Aguigui as Class Counsel in place of Lujan, Aguigui & Perez, LLP. *See* Aguigui Decl., Ex. 2. The
hours spent by Mr. Aguigui at his old and new firm are included in his declaration.

1 submitted declarations and billing records reflecting 522.7 and 214.4 hours respectively on post-
2 judgment litigation services. Girard Decl. at ¶ 19; Aguigui Decl. at ¶ 13. Multiplying those hours by the
3 rates already set by the Court in its initial award of attorney’s fees, the two firms’ lodestars are
4 \$122,145.00 and \$75,040.00 respectively.

5 **1. Class Counsels’ Hourly Rates Are Reasonable**

6 In section 1983 cases, courts consider the reasonableness of attorneys’ hourly billing rates under
7 the following criteria: (i) the novelty and difficulty of the issues, (ii) the skill required to try the case,
8 (iii) whether the fee is contingent, (iv) the experience held by counsel, (v) whether counsel obtained
9 “excellent results,” and (vi) fee awards in similar cases. *Moreno v. City of Sacramento*, 534 F.3d 1106,
10 1114 (9th Cir. 2008). Ultimately, the hourly rates should be commensurate with “similar services by
11 lawyers of reasonably comparable skill, experience, and reputation” within the relevant legal
12 community. *Blum v. Stenson*, 465 U.S. 886, 895 n. 11 (1984). Here, the Court has already determined
13 the reasonable hourly billing rates for Class Counsel:

- 14 • \$350 per hour for partners and senior associates;
- 15 • \$150 per hour for junior associates; and
- 16 • \$100 per hour for law clerks, paralegals, and litigation assistants.

17 If granted, Plaintiffs’ request will entail payment of the same hourly rates for each attorney as
18 previously ordered by the Court, with just two exceptions: First, Elizabeth Kramer of Girard Gibbs had
19 been a summer law clerk with the firm when Plaintiffs filed their previous fee motion, but Ms. Kramer
20 has since graduated law school, passed the bar, and serves as an associate with the firm. Girard Decl. at
21 ¶ 17. Plaintiffs thus request an hourly rate of \$150 for Ms. Kramer’s time. Second, Christopher Hikida,
22 an associate at Girard Gibbs, did not work on the litigation pre-judgment and so the prior award did not
23 specifically set an appropriate hourly rate for his time. Plaintiffs seek compensation for Mr. Hikida at
24 the same rate as other associates—\$150 per hour.

25 **2. The Hours Expended Are Reasonable**

26 Courts look to the amount of hours counsel billed during the litigation and “generally defer to the
27 ‘winning lawyer’s professional judgment as to how much time he was required to spend on the case.’”
28 *Costa*, 690 F.3d at 1135-36 (quoting *Moreno*, 534 F.3d at 1112). Here, to provide the Court with a

1 summary of the work performed in post-judgment proceedings, the time expended is divided into
2 categories: (1) Monitoring and Enforcement—which includes time devoted to monitoring Defendants’
3 compliance with the Court’s injunction and enforcing the Court’s Orders awarding fees and costs; and
4 (2) Applications for Attorney’s Fees and Costs—which includes litigating the entitlement to and award
5 of attorney’s fees and costs at the District Court level.

6 The total hours billed are derived from the contemporaneous billing records that Class Counsel
7 maintained throughout the proceedings. Girard Decl., at ¶ 20; Aguigui Decl., at ¶ 6. Those records
8 reflect that Girard Gibbs LLP and The Law Offices of Ignacio Cruz Aguigui expended 522.7 and 214.4
9 hours, respectively, on post-judgment efforts necessary to secure and protect the judgment. Girard
10 Decl., at ¶ 19; Aguigui Decl., at ¶ 13. Counsel have reviewed their billing records and exercised
11 judgment by reducing the number of hours billed to take into account potential duplication of efforts and
12 as otherwise appropriate to ensure the totals presented are consistent with a reasonable award of fees
13 given the work conducted. Girard Decl., at ¶ 21; Aguigui Decl. at ¶ 13.

14 **a. Monitoring Defendants’ Compliance with the Court’s Injunction**

15 In the Ninth Circuit, time spent on post-judgment monitoring and enforcement is compensable.
16 *Keith*, 643 F. Supp. at 42 (“In post-judgment circumstances . . . monitoring, implementation, and
17 enforcement activities that are reasonable and necessary are compensable.”); *see also Balla v. Idaho*,
18 677 F.3d 910, 916 (9th Cir. 2012) (finding that monitoring fees not resulting in additional relief are
19 compensable under Section 1988); *Graves v. Arpaio*, 633 F. Supp. 2d 834, 850 (D. Ariz. 2009), *aff’d*,
20 623 F.3d 1043 (9th Cir. 2010) (awarding fees for post-judgment enforcement of a court order).

21 The Court’s permanent injunction in this case requires Defendants to take a number of actions
22 going forward. Defendants must pay income tax refunds within six months’ time, and must do so in the
23 first-in, first-out order (i.e., in the same order as the corresponding tax returns were filed). (Doc. No.
24 197). Since entry of the injunction, Class Counsel have carefully monitored Defendants’ compliance
25 with those requirements, and have done so using all available information. First, because this litigation
26 pertains to key government operations and is a matter of public interest, there has often been publicly
27 available information that is highly relevant to the case. *See, e.g.*, ECF No. 76 (citing various news
28 articles, public auditor statements, and other publicly available documents relating to the budget and

1 income tax refund process). Throughout the post-judgment period, Class Counsel have continued to
2 review publicly available information pertaining to the Government of Guam's budget practices and tax
3 refund payment progress, ranging from news articles to statements by public officials, to ensure the
4 Class's interests are protected as the government continues to debate and contemplate further actions
5 relating to the administration of tax refunds. Girard Decl., at ¶ 7; Aguigui Decl., at ¶ 18. Second, the
6 permanent injunction requires Defendants to file quarterly reports regarding their compliance with some
7 aspects of the injunction, (Doc. No. 197), and Class Counsel have reviewed those reports as they have
8 been provided. In at least one instance, the reports were not being formatted as required by the
9 injunction, and Class Counsel worked with Defendants to modify the reports going forward. Girard
10 Decl., at ¶ 7. All of these monitoring and enforcement efforts have been undertaken on behalf of the
11 Class and are compensable under section 1988 as set forth above.

12 **b. Enforcing the Court's Fees and Costs Orders**

13 After this Court ordered Defendants to pay Plaintiffs' attorney's fees and costs, (Doc. No. 237,
14 268), Defendants did not pay the awarded amount and then ignored a letter from Class Counsel
15 requesting payment, requiring Plaintiffs to move for a writ of execution. (Doc. No. 252). Defendants
16 opposed the motion, arguing that Guam law did not permit the issuance of writs of execution against the
17 Government of Guam, that Defendants had sovereign immunity from the judgment, and that a writ of
18 execution was contrary to public policy. (Doc. No. 253). While the motion for a writ was pending,
19 Defendants filed an emergency *ex parte* application for a bond and temporary stay, and requested a
20 waiver or reduction of the bond amount. (Doc. No. 260). Plaintiffs filed a reply in support of the writ,
21 responding to each of Defendants' arguments and separately opposed the application for a stay. (Doc.
22 Nos. 252, 265). The Court largely agreed with Plaintiffs' position, rejecting Defendants' arguments that
23 a writ could not issue, and granting a stay only upon Defendants posting a bond in the amount of
24 \$2,200,736.69, which is 125% of the amount awarded to Plaintiffs in attorney's fees and costs, not
25 including interest. (Doc. No. 269). Finally, much more recently, Plaintiffs prepared a motion to lift the
26 stay and enforce liability on the bond, as Defendants' appeals relating to fees and costs were rejected by
27 the Ninth Circuit. (Doc. No. 295). Because all of Plaintiffs' efforts in these regards were reasonably
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1 necessary to enforce this Court’s Orders, Class Counsel should be compensated for the time spent on
2 this activity.

3 **c. Litigating the Reimbursement of Plaintiffs’ Attorney’s Fees**

4 Courts in the Ninth Circuit have “uniformly held that time spent in establishing the entitlement to
5 and amount of the fee is compensable” in statutory fee shifting cases. *Camacho v. Bridgeport Fin., Inc.*,
6 523 F.3d 973, 981 (9th Cir. 2008) (quoting *In re Nucorp Energy Inc.*, 764 F.2d 655, 659-60 (9th Cir.
7 1985)); *see also McGrath v. Cnty. of Nevada*, 67 F.3d 248, 253 (9th Cir. 1995) (“Work performed on a
8 motion for fees under § 1988(b) is compensable.”); *Harris v. Maricopa Cnty. Superior Court*, 631 F.3d
9 963, 979 (9th Cir. 2011) (noting that work done preparing a motion for attorneys’ fees pursuant to
10 Section 1988 is compensable). “This is so because it would be inconsistent to dilute a fees award by
11 refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to
12 the fee.” *Camacho*, 523 F.3d at 981 (citation omitted).

13 In their initial motion for attorney’s fees, Plaintiffs sought attorney’s fees for work performed
14 before the filing of their fee petition on February 13, 2013. (Doc. No. 202). Defendants opposed the fee
15 application on several grounds, and Plaintiffs filed a reply in support. (Doc. Nos. 206, 209). Defendants
16 also filed a sur-reply without first obtaining leave from the Court, and Plaintiffs prepared a request for
17 leave and a response to the sur-reply (which were later mooted when the Court struck Defendants’
18 unauthorized sur-reply). (Doc. Nos. 230, 233, 234). Finally, Plaintiffs have also devoted time to
19 preparing the instant fee motion, which is also accounted for in the total number of hours billed for this
20 category of work. Girard Decl., at ¶ 19; Aguigui Decl., at ¶ 30.

21 **d. Litigating the Reimbursement of Plaintiffs’ Litigation Costs**

22 The Court may award fees for time spent relating to a bill of costs. *Yeager v. AT & T Mobility,*
23 *LLC*, 2:07-CV-02517, 2013 WL 4676755, at *7 (E.D. Cal. Aug. 30, 2013) (awarding fees for work
24 performed on a bill of costs); *see also Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 613 F. Supp. 824, 832
25 (S.D.N.Y. 1985) (finding that fees for hundreds of hours spent preparing a bill of costs and application
26 for attorney’s fees were not unreasonable where the issues involved were hotly contested).

27 In this case, Class Counsel filed a bill of costs on December 30, 2013 at the direction of the
28 Court. (Doc. Nos. 237, 239). Defendants objected to the bill of costs, arguing after more than two years

1 of litigation that the Court lacked subject matter jurisdiction. (Doc. No. 243). Defendants also went
2 through and objected to several of the categories of expenses in Plaintiffs' bill of costs as non-
3 recoverable. (*Id.*). In response, Plaintiffs researched the various points raised by Defendants and filed a
4 reply responding to each argument. Girard Decl., at ¶ 14; Aguigui Decl., at ¶ 26. After a hearing, the
5 Clerk of Court taxed costs under 28 U.S.C. § 1920 only, rather than awarding the additional costs
6 requested under section 1988 as Plaintiffs had requested. (Doc. No. 247). As a result, Plaintiffs filed a
7 motion asking this Court to review the award of costs, and after still more briefing on the issue,
8 Plaintiffs prevailed and the Court awarded an additional \$ 42,465 in costs over Defendants' objection.
9 (Doc. No. 268). This decision was among those affirmed on appeal. Given the novel and numerous
10 issues raised by Defendants in their opposition to the award of costs, the time Plaintiffs spent litigating
11 the costs issues was reasonable and should be reimbursed.

12 **C. Plaintiffs Should Be Reimbursed for Their Reasonable Litigation Expenses.**

13 In the time period following the filing of their initial fee application, Class Counsel advanced
14 \$15,457.09 in reasonable litigation expenses (not including the costs incurred litigating Defendants'
15 appeals).

16 Plaintiffs request reimbursement for printing and copy costs, process service costs, and
17 computerized legal research expenses. These costs are of the type that would normally be charged to a
18 fee-paying client, and are reimbursable under section 1988. "Under 1988, [the prevailing party] may
19 recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be
20 charged to a fee paying client.'" *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (quoting *Chalmers*
21 *v. City of Los Angeles*, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986)); *Trustees of Constr. Industry &*
22 *Laborers Health & Welfare Trust v. Redland Insurance Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006) ("It is
23 well established that attorney's fees under 42 U.S.C. § 1988 include reasonable out-of-pocket litigation
24 expenses that would normally be charged to a fee paying client, even if the court cannot tax these
25 expenses as 'costs' under 28 U.S.C. § 1920."). Further, the Court previously found that these categories
26 of expenses are recoverable under section 1988. (Doc. No. 268).

1 **III. CONCLUSION**

2 For the above reasons, plaintiffs request that the Court grant their motion for an award of
3 attorney's fees and costs.

4 DATED: November 10, 2015

Respectfully submitted,

5 **GIRARD GIBBS LLP**

6 By: /s/ Daniel C. Girard

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