UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report: April 17, 2009
(Date of earliest event reported)

EQUITY LIFESTYLE PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

Maryland	**1-11718**	**36-3857664**
(State or other jurisdiction of incorporation or organization)	(Commission File No.)	(IRS Employer Identification Number)

Two North Riverside Plaza, Chicago, Illinois	**60606**
(Address of principal executive offices)	(Zip Code)

(312) 279-1400
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01 Other Events

On April 17, 2009, the United States District Court for the Northern District of California issued an "Order for Entry of Judgment," and an "Order" relating to the parties' requests for attorneys' fees (the "Fee Order"), in connection with Equity LifeStyle Properties, Inc.'s lawsuit against the City of San Rafael, challenging the City of San Rafael's rent control ordinance.

The Order for Entry of Judgment is included in this Form 8-K as Exhibit 99.1.

The Fee Order is included in this Form 8-K as Exhibit 99.2.

The information in Item 8.01 of this Form 8-K, including the Exhibit 99.1 and 99.2 attached hereto, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that Section. The information in Item 8.01 of this Form 8-K, Exhibit 99.1 and Exhibit 99.2 attached hereto shall not be incorporated by reference into any registration statement or other document filed pursuant to the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such filing.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit 99.1	April 17, 2009 "Order for Entry of Judgment" of the United States District Court for the Northern District of California regarding Equity LifeStyle Properties, Inc. and the City of San Rafael.
Exhibit 99.2	April 17, 2009 "Order" of the United States District Court for the Northern District of California regarding Equity LifeStyle Properties, Inc. and the City of San Rafael.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

EQUITY LIFESTYLE PROPERTIES, INC.

Date: April 20, 2009

By: /s/ Michael B. Berman
Michael B. Berman
Executive Vice President and
Chief Financial Officer

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MHC FINANCING, LTD, et al,

Plaintiffs,

v

CITY OF SAN RAFAEL,

Defendant,

CONTEMPO MARIN HOMEOWNERS ASSOCIATION,

Defendant-Intervenor.
_____/

No C 00-3785 VRW

ORDER FOR ENTRY OF JUDGMENT

In the eight or so years this litigation has been pending, the takings jurisprudence of the United States Supreme Court and the Ninth Circuit has transformed. The market for housing now differs dramatically from that at the inception of this litigation. Before these changes, the extremely able lawyers at bar and the involvement of a renowned mediator were unable to find a resolution. Emotional and political obstacles to a resolution on one side and weighty constitutional issues on the other then worked

against a resolution. Current conditions may afford a new opportunity for the parties to achieve a fair and practical outcome consistent with constitutional standards. This order seeks to encourage those efforts.

More than a year ago, on January 29, 2008, the court issued its findings of fact and conclusions of law on claims by MHC Financing ("MHC") that the City of San Rafael's mobilehome rent and vacancy control ordinance ("Ordinance") effected an unconstitutional taking. Doc #554 ("Findings"). MHC owns the Contempo Marin Mobilehome Park ("Contempo Marin") in San Rafael, California. The Contempo Marin Homeowners Association ("Homeowners Association") defended the Ordinance along with the City of San Rafael ("City"). The court found that the Ordinance effected a regulatory taking and a private taking. Findings at 34, 51. The Homeowners Association and the City now bring separate motions to stay enforcement pending appeal of any judgment (so far none has been entered) based on the court's findings and legal conclusions. Doc ##561, 576.

Although the case presents unsettled issues of takings law, the violation of MHC's constitutional rights seems no less plain to the court now than when it entered its findings and conclusions of law. A stay of relief pending appeal would, therefore, continue in effect a constitutionally infirm ordinance. But invalidating the ordinance as to all affected residents of Contempo Marin may impose a hardship for which they are not directly responsible. It is, after all, the City, not the Contempo Marin residents, that enacted the Ordinance. Rather than enter a judgment that immediately invalidates the Ordinance and then stay

enforcement pending appeal to avoid an immediate hardship to Contempo Marin residents, the court will deny a stay but frame the injunctive relief in a manner that provides for an orderly remedy for the constitutional violation found here. Under terms of the judgment the court frames, the constitutional infirmity of the Ordinance will dissolve gradually, minimizing possible hardships to Contempo Marin residents while still vindicating the constitutional interests at stake.

The judgment to be entered here will gradually phase out the pad rent regulation scheme that the court has found unconstitutional. Existing residents of Contempo Marin will be able to continue to pay pad rentals as if the Ordinance were to remain in effect for a period of ten years. Enforcement of the Ordinance will be immediately enjoined with respect to new residents of Contempo Marin and expire entirely ten years from the date of judgment. During this ten year period, the only "hardship" current residents of Contempo Marin will suffer is the inability to capture the artificial premium in the resale price of their mobilehomes that the Ordinance creates. As this premium represents the unconstitutional taking of MHC's property interest, its denial to Contempo Marin residents deserves little weight in the balance of equities employed to frame the injunctive relief afforded here. The court's reasoning for this result follows.

I

At Contempo Marin, MHC leases plots of land, called "pads" for the purpose of installing a mobilehome on each plot. MHC furnishes and maintains private roads and other community

facilities within the park. Findings at 4-5 ¶7. MHC holds legal title to the pads, and pad lessees pay monthly rent to MHC for use of their respective pads and the facilities and services that MHC provides. Id at 5 ¶9. Pad lessees at Contempo Marin who wish to relocate usually sell their mobilehomes in place to the new resident, and the purchaser — in addition to acquiring the mobilehome — takes over the pad leasehold. Id at 5 ¶8, 8-9 ¶18. The mobilehomes at Contempo Marin are not, in fact, very mobile.

In 1989, the City enacted the Mobilehome Rent Stabilization Ordinance. The 1989 Ordinance imposed rent control for the pad rents and provided that rents could increase only according to a sliding scale tied to an inflation index prescribed in the Ordinance. The mobilehome resale prices were left unregulated. If the change in inflation was five percent or less, the park owner was entitled to increase pad rents by a percentage equal to the change in inflation. But if the change in inflation was greater than five or ten percent, rents could increase only at 75 or 66 percent, respectively, of the change in inflation. Id at 9-10 ¶20. In no year from 1993 to 1999 did the inflation index rise at an annual rate greater than 5 percent. Accordingly, rent increases could essentially keep pace with the inflation benchmark used in the Ordinance. Id at 14 ¶38.

In 1993, the City amended the Ordinance to add "vacancy control." Under vacancy control, any new resident taking over a mobilehome pad lease in Contempo Marin had the right to rent the pad at the same rate as the previous tenant. Thus, after the vacancy control amendment, the park owner could no longer raise the pad rent charged to a new pad lessee who took over the prior lease.

Findings at 10 ¶22.

After the City imposed vacancy control, the then-owner of Contempo Marin sued in state court, alleging that the combination of pad rent control and vacancy control in the amended Ordinance was an unconstitutional taking. The superior court upheld the Ordinance. While on appeal, MHC purchased Contempo Marin. The court of appeal later reversed the superior court judgment on other grounds. Id at 12-13 ¶¶26-33.

In 1999, the City amended the Ordinance yet again. The City replaced the sliding scale formula that provided for graduated pad rent increases depending on the magnitude of inflation with a single formula that limited increases to 75 percent of any change in the inflation index. For that reason, the 1999 amendments imposed an ever-growing gap between the fair market rental value of a mobilehome pad lease and the rent MHC could charge. Id at 14-15 ¶39. The 1999 amendments alone reduced MHC's revenue streams from Contempo Marin and the value of its property by a present value at the time of trial of $10,609,136. Id at 16 ¶42. Prior to the 1999 amendments, it was at least theoretically possible for pad rents to keep up with inflation. The 1999 amendments eliminated that possibility.

The market did not ignore the significant change that the 1999 amendments wrought. Future pad rents at Contempo Marin were depressed because pad rents could not under any circumstance keep up with the general level of inflation as represented by the index used in the Ordinance. Accordingly, in order to obtain the benefit of lower future rent payments, prospective buyers were able to — and did — pay a higher price to purchase the mobilehome itself

from the existing tenant than the value of the mobilehome divorced from the below-market-value pad rental. In this manner, the reduction in rents was "capitalized" into the value of the mobilehome. Thus, the 1999 amendments created an inevitable premium in the resale prices of mobilehomes in Contempo Marin. Findings at 15-16 ¶41.

The only beneficiaries of that premium were the residents of Contempo Marin at the time the 1999 amendments went into effect. Id at 19 ¶52. These residents benefitted from the Ordinance if they continued to reside in Contempo Marin or if they sold their mobilehome plus pad leasehold to a new resident. Because the 1999 amendments did not change the total amount that future tenants would pay to live at Contempo Marin (mobilehome price plus pad rent), the 1999 amendments themselves did not contribute to the availability of low-cost housing in the City, which was a stated objective of the Ordinance. Id at 19 ¶51. Meanwhile, the whole Ordinance reduced MHC's net operating income by 75 percent and reduced the value of the park from $120 million to $23 million. Id at 24-26 ¶¶69-73.

Based on the foregoing findings of fact, the court concluded that the Ordinance as amended in 1999 effected a regulatory taking under the Penn Central test (id at 21-34) as well as a private taking under the Public Use Clause of the Fifth Amendment (id at 34-51). The court concluded as a matter of law that the 1999 amendments were not severable from the previous version of the Ordinance. Id at 74-79. Accordingly, the court held that the Ordinance was invalid in its entirety.

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After the court issued its order, MHC submitted a proposed form of judgment requesting that the court enjoin the Ordinance effective immediately. The City and the Homeowners Association filed objections (Doc ##555, 556), and the court took the matter under submission. On February 12, 2008, the court requested further briefing by March 14 on the question whether to stay its judgment pending appeal. Doc #558.

On February 20, 2008, before the court entered judgment or issued an injunction, MHC sent the Contempo Marin residents a letter regarding their leases. Doc #564, Exh A. The letter stated that monthly rents would increase to $1,925.00 beginning in March 2008. Id. The letter stated that "Chief Judge Walker's January 29, 2008 Order" is a "binding federal court Order" and thus "the City has no legal authority to enforce the Ordinance." Id.

At the City's request, the court held a telephone conference on February 22, 2008, to discuss MHC's letter. The court clarified that its order did not invalidate the Ordinance immediately. MHC agreed to refrain from raising its rents until the court ruled on the motion for a stay. The Homeowners Association contends that even after that conference call, MHC persisted in charging its residents $1,925.00 in rent but only demanded payment of current rent amounts, with rent invoices categorizing the difference between the two as "amount in dispute." Doc #569, Exh B. MHC has thus appeared to communicate to Contempo Marin residents that they are racking up debt by remaining at the park and will be liable for the "amounts in dispute" if MHC wins a final judgment. Id. Pad lessees have reacted predictably.

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After the conference call, the parties submitted their memoranda addressing whether enforcement of the court's order should be stayed. Doc ##561, 577, 581. In those memoranda, the City and the Homeowners Association (in the following discussion, the court refers the City and the Homeowners Association individually when appropriate or together as "defendants") challenge the court's findings of fact and conclusions of law. Doc ##561, 577. Defendants claim that because most Contempo Marin residents live on low or fixed incomes, the proposed rent is so high that most residents "will be forced to relocate or be evicted nearly immediately * * * ." Doc ##561 at 3, 577 at 25-27. MHC, on the other hand, is anxious to get out from under an ordinance found to be unconstitutional.

II

The Ninth Circuit reaffirmed recently the standard for granting a stay pending appeal. See Golden Gate Restaurant Ass'n v City and County of San Francisco, 512 F3d 1112, 1115-16 (9th Cir 2008). The party requesting a stay must show either (1) "a probability of success on the merits and the possibility of irreparable injury" or (2) that "serious legal questions are raised and that the balance of hardships tips sharply in its favor." Lopez v Heckler, 713 F2d 1432, 1435 (9th Cir 1983). These are "two interrelated legal tests" that "represent the outer reaches of a single continuum." Lopez, 713 F2d at 1435. "[T]he required degree of irreparable harm increases as the probability of success decreases." NRDC v Winter, 502 F3d 859, 862 (9th Cir 2007). Lastly, the court should "consider where the public interest lies"

as a factor independent of the parties' interests. Golden Gate Restaurant Ass'n, 512 F3d at 1116. "The relative hardship to the parties is the critical element in deciding at which point along the continuum a stay is justified." Lopez, 713 F2d at 1435.

Defendants' better argument for a stay is not that they have a strong likelihood of success on appeal, but that the relative hardships tip in their favor. Defendants argue that Contempo Marin residents may suffer irreparable injuries if the court does not grant a stay because an injunction against enforcement of the Ordinance will cause MHC to increase pad rents, forcing some Contempo Marin residents to move. Doc ##561 at 12-12, 577 at 25-27. The court will, therefore, analyze defendants' motions under the "serious legal questions" test.

As the following demonstrates, there are serious hardships on both sides. While Contempo Marin residents face the prospect of a sudden increase in their pad rents, MHC has long been deprived of its significant property interests, and a stay will prolong the taking MHC has suffered. The appropriateness of a stay turns on the weight of these hardships. Central to consideration of the balance of hardships here is that the party primarily responsible for creating MHC's hardship — namely, the City — will not immediately suffer any hardship.

The party seeking a stay "must demonstrate that serious legal questions are raised and that the balance of hardships tips sharply in its favor." Lopez, 713 F2d at 1435. Defendants can demonstrate a "serious legal question" by showing that they have a "fair chance of success" on appeal. National Wildlife Federation v Coston, 773 F2d 1513, 1517 (9th Cir 1985). Serious questions are

"substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." Republic of Philippines v Marcos, 862 F2d 1355, 1362 (9th Cir 1988). "For purposes of injunctive relief, 'serious questions' refers to questions which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo lest one side prevent resolution of the questions or execution of any judgment by altering the status quo." Gilder v PGA Tour, Inc, 936 F2d 417, 422 (9th Cir 1991) (quotation marks omitted).

A

Defendants challenge the court's finding of a private taking. Doc ##561 at 10-11, 577 at 22-23. In its findings of fact and conclusions of law, the court determined that the "public purposes" the City asserted for the Ordinance — protecting homeowner equity, creating affordable housing and protecting fixed-income residents — were "palpably without reasonable foundation" and were mere "pretext[s]" that masked a private taking intended to enrich the Contempo Marin residents. Findings at 49-51 ¶¶152-57; see Kelo v City of New London, 545 US 469, 478 (2005).

In their motions for a stay, defendants argue the court's finding of a private taking is in tension with its conclusion that the Ordinance survives rationality review under the Due Process Clause. Doc ##561 at 11, 577 at 22-23. Although the court found the Ordinance operated so far afield from its stated purposes as to be pretextual, the court also found that the Ordinance was rationally related to its stated purposes. The court held that the

Ordinance was permissible under the Due Process Clause because "a rational legislator could have believed that the rent control ordinance would further the stated goals, at least insofar as the purpose is to protect existing tenants." Findings at 54 ¶169, 56 ¶171, quoting Levald, Inc v City of Palm Desert, 998 F2d 680, 690 (9th Cir 1993). Defendants argue that if the Ordinance is rationally related to its stated public welfare goals as required by due process, then those same public welfare goals cannot be pretextual. Doc ##561 at 10-11, 577 at 22-23; see also Kelo, 545 US at 490-92 (Kennedy, J, concurring), citing Cleburne v Cleburne Living Center, Inc, 473 US 432, 446-47, 450 (1985). Defendants misapprehend the court's findings and the governing test for a stay.

In the context of a private taking claim, neither the Supreme Court nor the Ninth Circuit has addressed a rent control ordinance that purports to reduce rents but creates instead an unavoidable one-time premium. Other cases raising taking and due process claims are distinguishable. Mobilehomes at parks like Contempo Marin are highly unusual because new buyers obtain a unitary ownership interest in a divided asset. Buyers obtain ownership of the mobilehome unit and a pad leasehold interest, but negotiate one price with the mobilehome owner and pad lessee. Buyers do not negotiate with or arrive at a pad rental price with MHC, the pad lessor. The price paid to the mobilehome owner incorporates the market value of the mobilehome unit and the value of any premium inherent in the depressed pad rents resulting from the Ordinance. Even though MHC is not a party to these negotiations, its interests are nonetheless affected. Price

regulation in this context is rare and, although there have been a number of cases involving mobilehome pad rent regulation or somewhat analogous regulation, no definitive guidance has emerged.

Previous judicial attempts to address the problem have failed, leaving the question unsettled. The Supreme Court encountered the "premium" issue in Yee v City of Escondido, 503 US 519 (1992), but that ruling is not helpful here because plaintiffs in that case had raised a physical taking claim. Yee stated specifically that the case might have turned out differently had the court granted certiorari on the regulatory taking claim. 503 US at 530, 533.

In Richardson v City and County of Honolulu, 124 F3d 1150 (9th Cir 1997), the Ninth Circuit picked up where Yee left off. The court found that a rent control ordinance that created a premium caused an unconstitutional regulatory taking. Richardson, 124 F3d at 1165-66. That ruling does not apply here because the court relied on the now-defunct "substantially advances" test, which the Supreme Court spurned in Lingle v Chevron USA, Inc, 544 US 528 (2005).

Lingle addressed yet another rent control ordinance that did not reduce rents but instead created a premium. 544 US at 534-36. The plaintiff in Lingle — like the plaintiff in Richardson — claimed that the ordinance did not "substantially advance" a legitimate public interest and therefore effected a regulatory taking. The Court held that the "substantially advances" test could not apply to a regulatory taking claim, and the Court reversed the district court's judgment that the ordinance was unconstitutional. 544 US at 548. Instead, the Court held that the

"substantially advances" theory is "an inquiry in the nature of a due process" test. 544 US at 540, 542. Justice Kennedy's concurrence emphasized that even though plaintiff had not made out a regulatory taking claim, the ordinance might "be so arbitrary or irrational as to violate due process" if it "fail[s] * * * to accomplish a stated or obvious objective * * *." 544 US at 548-49 (Kennedy concurring). See also Kelo, 545 US at 490-92 (Kennedy concurring) (arguing the same point in the context of public use).

Each of these cases tried to address the type of ordinance encountered here. But each court never made it past the preliminary step of clarifying the applicable legal test. None of the cases determined whether a rent control ordinance like the one at bar effects a private taking. The Ordinance creates an inevitable premium attributable to one property interest and transfers that premium to someone else. In doing so, the Ordinance shuts out from participation in the transaction the owner who loses the premium — in this case, MHC. The validity of such an Ordinance remains unsettled and presents a serious legal question on appeal. The fact that a city council may rationally have thought the Ordinance advanced its stated objectives should not rescue an enactment that does no such thing. The rational basis test does not insulate unsound public policy from attack. The rational basis test is, instead, a principle of judicial restraint — courts' authority cannot and should not be invoked every time elected officials enact or enforce some unwise or perverse statute, ordinance or regulation. Williamson v Lee Optical of Oklahoma, Inc, 348 US 483, 488 ("The day is gone when this Court uses the Due Process Clause * * * to strike down state laws * * * because they

may be unwise, improvident, or out of harmony with a particular school of thought."). But the judicial restraint embodied in the rational basis test does not warrant judicial indifference to the violation of important constitutional limitations.

B

Defendants also challenge the court's finding of a Penn Central regulatory taking. Doc ##561 at 7, 577 at 23. After Lingle, the Homeowners Association contends, a court reviewing a regulatory taking claim may not substitute its own findings about the reasonableness of an ordinance for the findings of a legislative body. Doc #589 at 6. Rather than consider the Ordinance's reasonableness, according to the Homeowners Association, a regulatory taking claim focuses on "the magnitude or character of the burden a particular regulation imposes upon private property rights." 544 US at 542 (emphasis in original). Accordingly, so this argument goes, the dearth of authority on "premium" rent control ordinances does not affect the court's regulatory taking analysis because the crucial inquiry — the magnitude of MHC's harm — is more economic and algebraic than legal. Only the amount of damage is important. All the considerations undergirding the private taking analysis — the effectiveness of the Ordinance, the motivations of the City Council, the peculiar unitary market for housing at Contempo Marin — are irrelevant under this view.

The court's finding that the Ordinance effects a Penn Central regulatory taking included findings of fact as well as conclusions of law. The court found that the 1999 amendments alone

reduced MHC's revenue streams from Contempo Marin and the value of its property by $10,609,136. Findings at 16 ¶42. The Ordinance as a whole reduced the value of MHC's land from approximately $120 million to $23 million. Id at 25-26 ¶¶72-73. Based on those factual findings, the court concluded that the Ordinance was functionally equivalent to a physical taking of all or an overwhelming percentage of the value of MHC's land. Id at 27 ¶80.

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." FRCP 52(a). The court of appeals should "accept [this] court's findings of fact unless upon review [it is] left with the definite and firm conviction that a mistake has been committed." United States v Doe, 155 F3d 1070, 1074 (9th Cir 1998). Under clearly erroneous review, this court's findings of fact will likely be upheld.

This court's conclusion that the above facts constitute a regulatory taking is a mixed finding of law and fact because it involves a determination whether the reduction in value of MHC's land satisfies an undisputed rule of law. Mixed questions of law and fact are generally reviewed de novo. Diamond v City of Taft, 215 F3d 1052, 1055 (9th Cir 2000). This is even more true when the mixed question involves constitutional rights. United States v City of Spokane, 918 F2d 84, 86 (9th Cir 1990).

The City argues that the court misapplied the Penn Central "economic impact analysis." Doc #577 at 23. The City asserts that the court erred by considering the reduction in value caused by the entire Ordinance, instead of solely the reduction caused by the 1999 amendments. Only the 1999 amendments, according to the City, not the Ordinance as a whole, failed to advance the

City's asserted public purposes. In essence, the City argues that prior to the 1999 amendments, the Ordinance was constitutional and therefore any harm to MHC's constitutional rights did not accrue until 1999. Doc #577 at 23.

If the court looks to the entire Ordinance in assessing the reduction in value, the argument goes, MHC realizes a windfall, benefitting from the invalidation of those portions of the Ordinance that were well within the City's regulatory powers and well within MHC's reasonable expectations at the time it purchased the park. See Doc #561 at 9. Had the court calculated the reduction in value caused by the 1999 amendments only, the City contends the court would not have found a regulatory taking because the reduction in value would have been approximately $10 million rather than $97 million. Doc #577 at 23.

MHC responds that the court was correct to calculate the effect of the Ordinance as a whole rather than only the effect of the 1999 amendments. Doc #596 at 11. MHC asserts that calculating the effect of the entire Ordinance "is especially appropriate where, as here, the 1999 amendments are not severable from the rest of the regulation. Under the City's theory, governments could immunize a law from a Penn Central claim by repeatedly amending the law so that the incremental economic impact of any one amendment, standing alone, is insufficient to give rise to a taking * * * ." Id.

The only mentions in the Findings of any legally significant distinction between the entire Ordinance and the 1999 amendments were in the court's analysis of the statute of limitations (Findings at 66-69) and the court's analysis of

severability (Findings at 74-79). Neither of those analyses is relevant to the economic impact test the City posits.

The court's statute of limitations discussion is only indirectly relevant to the economic impact test, and even if it were directly relevant, it would not provide a clear answer. For the purposes of the statute of limitations, the court found that the 1999 amendments "substantially altered" "the operation of the Ordinance" by causing "a fresh injury" to MHC's property rights. Findings at 68-69. At most, the court's conclusion would support the City only to the extent that it suggests the 1999 amendments caused a distinct injury which may have pushed the preexisting Ordinance from constitutional into unconstitutional terrain, and thus MHC's harm equals the amount of the incremental injury only.

The court, however, further stated in the context of the statute of limitations that MHC could still challenge the entire Ordinance (not just the 1999 amendments) because "[t]he constitutionality of an ordinance can only be determined by evaluating the totality of its provisions and effects" and because the 1999 amendments could not be "evaluated in isolation." Id at 69 ¶37, citing Richards v United States, 369 US 1, 11 (1962). MHC reads that statement beyond the statute of limitations context, arguing that the same principle must hold true for the purposes of the economic impact test. Doc #596 at 11. This reading stretches the court's statement too far. The court's holding implies only that the 1999 amendments changed "the totality" of the Ordinance and that the new "totality of the amended Ordinance" fell within the limitations period and did not bar MHC's suit. Findings at 69.

The court's severability analysis does not settle the Penn Central question. See id at 74-79. For the purposes of severability, the court concluded that the 1999 amendments were not severable from the rest of the Ordinance because "[e]xcision of the 75 percent language [introduced by the amendments] renders the Ordinance as a whole essentially meaningless." Findings at 76. MHC argues that holding supports applying the economic impact test to the reduction in value caused by the Ordinance as a whole. Doc #596 at 21-22. The court made its severability finding months after it had determined that the Ordinance effected a regulatory taking. Moreover, severability might present its own serious legal question.

But more fundamentally, California state law on severability has no relation to the Penn Central analysis. First, a finding that the unconstitutional 1999 amendments are not severable means that the full Ordinance may not be enforced; it does not imply that the Ordinance is otherwise constitutional or not. Second, merely because the severability analysis and the economic impact analysis both might mention carving up a statute does not mean that one rule of law controls the other. The court's conclusion whether the 1999 amendments are grammatically, functionally and volitionally severable from the predecessor Ordinance says nothing about whether the City exceeded its authority to provide for its residents' general welfare.

Overall, the court's conclusions on the statute of limitations and severability do not address a quite different question: how to measure whether a property regulation "goes too far" under the Fifth Amendment. Pennsylvania Coal Co v Mahon, 260

US 393, 415 (1922). There would be no logical inconsistency in holding that the amendments are not severable, or that the statute of limitations has not run, yet the economic impact on MHC's land should be calculated in terms of the difference between the unconstitutional Ordinance and the milder predecessor in force when MHC purchased the park. Accordingly, the Penn Central issue here — whether to apply the economic impact test to the entire Ordinance or to the amendments that eliminated the sliding scale adjustments tied to inflation — is difficult and unsettled, and the court concedes fair grounds for disagreement. The court's regulatory taking holding presents a serious legal question, but this is a consideration that can more properly be considered in framing the terms of the injunction and declaratory relief awarded MHC than in whether any such relief should be stayed or held in abeyance pending appeal.

C

The City has filed a notice of the Ninth Circuit's Nov 25, 2008 decision in Equity Lifestyle Property, Inc v County of San Luis Obispo, et al, 548 F3d 1184 (Doc #605), upholding the district court's dismissal of a mobilehome park owner's taking challenge to a local rent control ordinance as unripe. Id at *4-7. The Ninth Circuit held that California's administrative procedure, known as a Kavanau adjustment, providing for adjustment of future rents to compensate parties injured by a government taking is not futile per se for failure to provide adequate compensation and that the claim at issue was therefore unripe under Williamson County Regional Planning Commission v Hamilton Bank of Johnson City, 473 US 172

(1984), because the mobilehome park owner had failed to pursue a Kavanau adjustment. Equity Lifestyle Property does not affect the court's determination that MHC's claims here do not fail for unripeness. See Findings at 58-66. Here, unlike in Equity Lifestyle Property, the court has determined, based on the long and tortured relationship between MHC and the City, that requiring a Kavanau adjustment in this case would be futile.

III

Given the novel questions presented in the context of unsettled principles of law, the court turns to the balance of hardships that immediate invalidation of the Ordinance would create.

The City, of course, is the party whose improvident decisions created this unfortunate situation. Any claim of hardship to the City itself would likely not move the court. But on this motion to stay enjoinment of the Ordinance and modify the relief awarded, the City seeks to piggyback on the interests claimed by the Contempo Marin residents, most of whom are embroiled in this litigation through no fault of their own. In crafting an equitable remedy, the court must consider the hardship to them.

Defendants contend that if the court does not stay its order pending appeal, then MHC will raise rents to two or three times the current amounts, the Contempo Marin residents will not be able to "pay the higher rent while they await the outcome of the appellate process" and "there will be a mass exodus from the park and it will be impossible to restore the status quo ante in the event of a reversal." Doc #561 at 3-4. The City and the

Homeowners Association have submitted 233 declarations from park residents claiming that effect. Doc #562. These form declarations include many handwritten comments from the declarants, including: "[The proposed rent of $1,925.00] is more than my monthly income" (Doc #562, Exh A (Candace Clark Decl)); "I am a 73-year-old widow living on limited fixed income" (Doc #562, Exh A (Ann Plant Decl)); "I am on fixed income, I am unable to work" (Doc #562, Exh A (Paula Paganini Decl)); and "We will not be able to pay this large amount of lot rent along with our mortgage. Our home is all we have! We also care for our elderly parent who also lives in Contempo" (Doc #562, Exh A (Jayne & Brian Johnson Decl)). The Homeowners Association emphasizes that the residents' harm is irreversible and includes many non-commensurable harms such as children changing schools. Doc #592 at 5. These declarations have the earmarks of an orchestrated and rather maudlin appeal to sympathy. But the court does not doubt that a substantial pad rent increase could work a palpable hardship on Contempo Marin residents.

MHC rejects the defendants' concerns as "speculative," "hearsay" and "self-serving." Doc #596 at 19. MHC redescribes the residents' harm as merely the "elimination" of a "subsid[y] in the form of below market rents." Doc ##596 at 17, 583 at 5. MHC, understandably, also points to its own constitutional injury as irreparable harm. Doc #596 at 18.

Although the court concludes that the regulation goes too far in this case, the situation of the Contempo Marin residents nonetheless calls for fashioning a phased remedy. Not all of the current Contempo Marin residents have benefitted from the premium that the 1999 amendments created. The premium benefitted only

those pad lessees living in Contempo Marin when the amendments became effective. New lessees have in effect already paid for the privilege of paying below-market rent. Because these post-1999 Contempo Marin buyers presumably relied on the continued validity of the Ordinance, to subject them immediately to higher rents would be unjust in that they would be required to pay twice the premium created by the Ordinance — once at the time of buying a Contempo Marin mobilehome and then again through higher monthly pad rentals. It is simply impossible as a practical matter to claw back from pre-1999 residents any premium that they captured through sales of their mobilehomes.

In this case, the balance of hardships tips in favor of a remedy that accommodates the interests of the mobilehome residents as well as MHC. As the court adverted at the outset, present conditions in the housing market may very well mean that an immediate and total striking down of the Ordinance would not affect Contempo Marin residents as much as they fear and as much as defendants would have the court believe. But the court's remedy is designed to buffer Contempo Marin residents from the large, sudden rent increases they fear.

As discussed above, at the time of trial, the operation of the whole Ordinance reduced MHC's net operating income by 75 percent and has reduced the value of the park from $120 million to $23 million. Every month that the Ordinance is in effect means substantial lost revenue for MHC unless the economics of the situation have changed very dramatically.

In crafting an appropriate remedy, the court must consider "where the public interest lies." **Golden Gate Restaurant**

Ass'n, 512 F3d at 1116. It is difficult to assess the public interest without assuming the soundness of the court's Findings. If the Ordinance is unconstitutional, then enforcing an unconstitutional law does not serve the public interest. And if the Ordinance is constitutional, then enjoining it serves no public purpose. Because the public interest does not tip the scale discernibly in either side's favor, consideration of the public interest does not affect the court's analysis.

In this situation, there is no perfect remedy. But the most equitable remedy is to fashion an injunction that allows current residents to continue for a time their leases at pad rents regulated by the Ordinance. These are, of course, the below-market rents that the post-1999 residents paid for in the form of a premium on the price of their mobilehomes if they moved in after the effectiveness of the Ordinance. Allowing continued enforcement of the Ordinance as to current residents will avoid the plight that defendants so dramatically script. When a current Contempo Marin resident transfers his leasehold to a new resident upon the sale of his mobilehome or by some other means, however, the balance of hardships tips sharply in favor of MHC and enjoining the Ordinance. Hence, the Ordinance shall be enjoined as to the next resident and any future resident, and those residents shall pay rates set by MHC (in the absence of any new and constitutional regulations enacted by the City).

The court realizes, of course, that enjoining the Ordinance as to future residents will significantly reduce the premium current residents will collect from new residents for the ability to pay below-market pad rents. But collecting that premium

was never a legal right of the current residents. Moreover, the premium represents the net present value of expected future pad rent discounts. Consequently, the adjustment to the premium based on the remedy the court fashions here will not be the first change to the premium — the premium has likely been changing during all stages of this litigation. For example, when the court issued its findings of fact and conclusions of law on January 29, 2008 that the Ordinance was unconstitutional, the expected value of future discounts likely dropped significantly because the chances that Contempo Marin mobilehome owners would be able to collect that premium in the future plunged. But most importantly, the purpose of the relief awarded by the court is to remedy the constitutional violation in a manner that does not impose undue hardships on Contempo Marin residents and is not unwarrantedly disruptive of the parties' expectations. Given the unusual factual context and the changed law, an invalidation of the Ordinance as to new residents of Contempo Marin while maintaining a lengthy status quo for current residents allows for an orderly transition.

One potential pitfall of a remedy that allows MHC to charge one price to current Contempo Marin residents and a different price to future residents is that the difference in the prices could produce inefficiencies by causing the residents to prolong their residency at Contempo Marin. Diminished turnover, of course, would further impose on MHC the hardship inherent in the Ordinance. An end date to effectiveness of the Ordinance is, therefore, appropriate. To mitigate the unintended consequences of price differentials between current and future residents, the court will delay complete invalidation of the Ordinance to a date ten

years from entry of judgment. Ten years is an appropriate period for the Ordinance to sunset because Contempo Marin lots are turned over, on average, every ten years. Doc ## 607, 608 (parties' submissions pointing to multiple sources in the record indicating that annual turnover is approximately ten percent and average tenancy is approximately ten years). Because ten years from now the average current resident would have sold his or her unit if there were no pad rent price differential between current and future residents, invalidating the Ordinance as to all residents at that time reduces incentives for strategic behavior by current residents.

An alternative might be to enjoin enforcement of the Ordinance only as to Contempo Marin residents who bought their mobilehomes after enactment of the 1999 amendments and who, therefore, paid the premium created by those amendments. As, however, those current residents who resided at Contempo Marin before the 1999 amendments are, in all likelihood, among the older residents of Contempo Marin, setting a definitive sunset date for the Ordinance would appear to be both more practical and more equitable.

IV

The court is well aware of the potential hardships that the Contempo Marin tenants will face if the Ordinance is immediately enjoined in full. The court emphasizes that it has considerable discretion in crafting a final injunction and has attempted to do so in a manner that vindicates MHC's constitutional

interests without undue hardship to current Contempo Marin residents.

Accordingly, the court DENIES the Homeowners Association's and the City's motions for a stay of the January 29, 2008 order (Doc ##561, 576) and will enter judgment accordingly. MHC is DIRECTED to submit a proposed form of judgment whereby enforcement of the Ordinance is enjoined as to pad lessees of Contempo Marin who come into possession after the date of judgment so that all current Contempo Marin pad lessees shall be allowed to continue their leases at rents regulated by the Ordinance. When a current Contempo Marin pad lessee transfers his leasehold to a new resident upon the sale of the accompanying mobilehome, the Ordinance shall be enjoined as to the next resident and any future resident. The Ordinance shall be enjoined as to all residents ten years from entry of judgment. No bond shall be required.

IT IS SO ORDERED.

VAUGHN R WALKER
United States District Chief Judge

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MHC FINANCING, LTD, et al,

Plaintiffs,

v

CITY OF SAN RAFAEL,

Defendant,

CONTEMPO MARIN HOMEOWNERS ASSOCIATION,

Defendant-Intervenor.
/

No C 00-3785 VRW

ORDER

Plaintiffs MHC Financing Ltd Partnership and Grapeland Vistas, Inc (collectively, MHC), filed a complaint in 2000 against defendant City of San Rafael (the City) alleging that the City's mobilehome rent control ordinance ("Ordinance") was an unlawful taking in violation of the Fifth Amendment. Doc #1. The parties now move for attorney fees and costs under 42 USC § 1988, the fee-

shifting statute applicable to civil rights cases. Doc ##576, 583. Because both MHC and the City asserted they had achieved some measure of success in this lengthy litigation, the court requested briefing to determine the "prevailing party." Doc #558.

I

MHC owns the Contempo Marin Mobilehome Park ("Contempo Marin") in San Rafael. Doc #1 at 2. In its original complaint, MHC claimed the Ordinance was a regulatory taking because it failed substantially to advance a legitimate state interest. Id at 7; see Richardson v City and County of Honolulu, 124 F3d 1150, 1164 (9th Cir 1997). MHC alleged that although the City's stated purpose in enforcing the Ordinance was to provide affordable housing, the Ordinance did no such thing. Id. The complaint requested monetary and injunctive relief. Id at 8.

MHC's complaint related to the City's regulation of rent control in Contempo Marin. In 1993, the City had amended a previous ordinance to add "vacancy control." Doc #554 at 10. Under vacancy control, any new resident taking over a lease in Contempo Marin would rent the pad at the same rate as the previous tenant. Id. In 1999, the City amended the ordinance again to limit rent increases to 75 percent of any change in inflation. Id at 13. The 1999 amendments imposed an ever-growing gap between the fair market rental value of a mobilehome pad lease and the rental rate MHC could charge. Id at 14.

As a result of the 1999 amendments, future rents at Contempo Marin would be depressed because rents would not keep up with inflation. Id at 15-16. Accordingly, in order to obtain the

benefit of lower future rent payments, prospective buyers would be willing to pay a higher price to purchase the mobilehome itself from the existing tenant. Id. In this manner, the reduction in rents was "capitalized" into the value of the mobilehome. Id. Thus the 1999 amendments created a one-time-only premium in the resale prices of mobilehomes in Contempo Marin.

The only beneficiaries of that premium were the residents of Contempo Marin at the time the 1999 amendments went into effect. Doc #554 at 19-20. Because the 1999 amendments did not change the total amount that future tenants would end up paying to live at Contempo Marin (mobilehome price plus rent), the 1999 amendments themselves did not contribute to the availability of low-cost housing in the City. Id at 19. Meanwhile, the complete Ordinance reduced MHC's net operating income by 75 percent and reduced the value of the park from $120 million to $23 million. Id at 24-26.

In 2001, the parties reached a settlement agreement whereby the City agreed to "initiate" amendments that would repeal vacancy control. See Doc #23, Exh 1. On July 11, 2001, the court stayed proceedings in this case while the parties implemented the conditional settlement agreement. Doc #10. The City Council held public hearings, but elected not to repeal vacancy control. MHC then moved to enforce the settlement agreement. Doc #23. On March 19, 2002, the court granted MHC's motion, finding that the City was contractually obligated to repeal vacancy control. Doc #56.

MHC next filed a First Amended Complaint (FAC) alleging state-law claims for breach of contract and breach of the duty of good faith and fair dealing. Doc #78 (third and fourth causes of action). The FAC also alleged that the City's refusal to permit

MHC to change the use of the park constituted a physical taking. Doc #78 (fifth and sixth causes of action).

In 2002, the court granted the motion of Contempo Marin Homeowners Association (CMHA) to intervene as a defendant. In addition, on August 7, 2002, the court granted the City's motion for reconsideration of the court's earlier holding that the settlement agreement was a valid contract. Doc #99.

The case proceeded to trial. In late October and November, 2002, the state-law contract causes of action were tried before a jury (Doc ##337-350) and the constitutional causes of action were tried before the court (Doc #366, 370, 371, 378). The jury returned a verdict in favor of the City on the contract claims. Doc #350. The court stayed its ruling on the takings causes of action pending the Ninth Circuit's decision in Lingle v Chevron USA, Inc, 363 F3d 846 (9th Cir 2004).

The Ninth Circuit issued its decision in Lingle on April 1, 2004. On October 14, 2004, the United States Supreme Court granted certiorari in Lingle (543 US 924 (2004)) and the court subsequently extended its stay pending the Supreme Court's Lingle decision. Doc #437.

On May 23, 2005, the United States Supreme Court issued its decision in Lingle, rejecting the "substantially advances" theory that had served as the basis for MHC's regulatory takings claim. Doc #444. Based on the Lingle decision, MHC requested leave to amend its complaint and file new constitutional claims. Doc #450. The court granted MHC's motion to amend its complaint on January 27, 2006. Doc #468.

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On February 17, 2006, MHC filed a corrected Second Amended Complaint (SAC). Doc #472 Exh A. The SAC alleged a regulatory taking under Penn Central Transportation Co v New York City, 438 US 104 (1978) rather than under Richardson. In connection with its regulatory taking argument, MHC alleged that the Ordinance was an improper land-use exaction under Nollan v California Coastal Commission, 483 US 825 (1987) and Dolan v City of Tigard, 512 US 374 (1994). Id at ¶¶96-101. The SAC also alleged that the Ordinance was a private taking under Kelo v City of New London, 545 US 469 (2005). MHC added a claim that the Ordinance denied them substantive due process as described in Lingle. The SAC retained the physical takings cause of action as well as the contract causes of action. The SAC sought declaratory and injunctive relief.

On December 5, 2006, the court granted defendants' motion to dismiss the physical takings cause of action and denied the motion on the other causes of action. Doc #486.

The court conducted a bench trial on MHC's remaining claims on April 9, 11, 24 and 30, and May 1, 2007. Doc #509, 517, 524, 526, 527. The court issued preliminary findings of fact and conclusions of law on July 26, 2007 (Doc #544) and, after further briefing, issued a final order on January 29, 2008. Doc #554.

In its final order, the court concluded that the Ordinance effected a regulatory taking under the Penn Central test as well as a private taking under the Public Use Clause of the Fifth Amendment. The court held that the Ordinance did not deny MHC due process of law under the Fourteenth Amendment.

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II

MHC moves to recover all of its attorney fees and costs because it prevailed on its ultimate regulatory taking claim and achieved its objective in bringing the lawsuit with a court order that the Ordinance is unconstitutional. Doc #584 at 6. The City argues that it is entitled to attorney fees and costs as the prevailing party on MHC's breach of contract claim and breach of implied covenant claim. Doc #577 at 11-14. And while the City concedes that MHC prevailed on some of its takings theories (regulatory taking and private taking), the City requests a reduction in MHC's fee request on the grounds that MHC failed to succeed on all its takings theories. The City argues that MHC did not prevail on either its pre-Lingle claim or its breach of contract claims and is not entitled to fees incurred in pursuing those unsuccessful causes of action. Id at 15-18.

42 USC § 1988 allows a court to award reasonable attorney fees to a prevailing party in a civil rights action. Hensley v Eckerhart, 461 US 424, 429 (1983); Chalmers v City of Los Angeles, 796 F2d 1205, 1210 (9th Cir 1985). "The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances." Hensley, 461 US at 429 (internal quotation and citation omitted). Accordingly, a prevailing plaintiff in a civil rights action should typically recover a reasonable attorney fee "unless special circumstances would render such an award unjust." Id (internal quotation and citations omitted); see Chalmers, 796 F2d at 1210.

The Supreme Court has instructed that "the extent of a plaintiff's success is a crucial factor in determining the proper

amount of an award of attorney's fees under 42 USC § 1988."

Hensley, 461 US at 440. In determining whether a plaintiff's limited success should reduce the number of hours for which it is entitled to a reasonable fee, the Ninth Circuit has formulated a two-part test: (1) consider whether the claims on which the plaintiff failed to prevail are related to the claims on which he succeeded; (2) if the claims are related, determine whether the plaintiff achieved a level of success that makes the hours reasonably expended on those unrelated claims a satisfactory basis for the fee award. Sorenson v Mink, 239 F3d 1140, 1147 (9th Cir 2001). MHC was successful on its takings claim but lost on its contract claims. Accordingly, the court must determine whether to award fees on each of those claims.

First, to determine whether the claims are related, the court essentially must examine whether the claims were intended to remedy "the same course of conduct." Schwarz v Sec'y of Health & Human Services, 73 F3d 895, 903 (9th Cir 1995). Factors to consider are: (1) whether the claims arise from the same core of facts; (2) whether it is likely that some of the work performed in connection with the unsuccessful claims aided the work performed on the merits of the successful claims; and (3) whether the same or different individuals were the primary perpetrators. Id. If the unsuccessful claim is unrelated to the successful claims, then the hours expended on those unrelated, unsuccessful claims should not be included in the fee award.

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The City argues first that the pre-Lingle takings causes of action are not related to the constitutional causes of action on which MHC eventually prevailed. MHC prevailed on a private takings cause of action and an as-applied regulatory takings cause of action. MHC did not prevail on its facial regulatory takings cause of action (the "substantially advances" theory), its substantive due process cause of action, its land-use exaction theory or its physical takings cause of action.

All these different causes of action except due process are part of the same "claim": a taking of private property in violation of the Fifth Amendment. MHC's various causes of action are different theories in support of the same claim. This court recognized that distinction in its order of December 5, 2006, granting partial summary judgment, in which the court defined the second amended complaint thusly: "MHC proffers four different theories for its takings claim, alleging that the City has performed: [a regulatory taking, a physical taking, a private taking and a land-use exaction]." Doc #486 at 3 (emphasis added).

The Supreme Court emphasized the claim versus cause of action distinction in Yee v Escondido, 503 US 519, 534-35 (1992). Yee focused on physical taking, but the Court also considered whether to address the landowner's regulatory taking argument. Yee rejected the contention that the regulatory taking argument was not before the Court because it was not raised below. The Court focused on claims, not arguments:

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> **Petitioners unquestionably raised a taking claim in the state courts. The question whether the rent control ordinance took their property without compensation, in violation of the Fifth Amendment's Takings Clause, is thus properly before us. Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. Petitioners' arguments that the ordinance constitutes a taking in two different ways, by physical occupation and by regulation are not separate claims. They are, rather, separate arguments in support of a single claim — that the ordinance effects an unconstitutional taking.**

Yee, 503 US at 534-35; see also id at 537 (declining nevertheless to rule on regulatory taking because the question presented was limited to physical taking).

Similarly, MHC's various taking theories here all support a single unconstitutional taking claim. Moreover, MHC's pre-Lingle taking claim was closely related to the regulatory taking claim on which MHC ultimately prevailed. The variety and changes in MHC's theories merely reflect the uncertainty and dynamic nature of Takings Clause case law. Accordingly, MHC's various taking arguments are all part of the same taking claim. MHC prevailed on its regulatory taking claim and is entitled to recover attorney fees and costs for its pursuit of that claim even though its arguments changed to correspond with the changing law.

The substantive due process claim, by contrast, is a separate and distinct claim. It arises out of the Fourteenth Amendment directly, whereas the taking claim arises out of the Fifth Amendment as incorporated against the several states. As the Supreme Court stated in Lingle, a "means-ends" due process inquiry "is logically prior to and distinct from the question whether a regulation effects a taking * * *." 544 US at 542-43.

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Nevertheless, under the Schwarz factors described above, the two claims are related. First, the claims arise from the same set of facts: the City's 1993 and 1999 amendments to its rent control Ordinance. The facts underlying both claims are identical; the only difference is the legal theory of liability. Second, much of the work performed in connection with the unsuccessful due process claim aided the successful private taking claim. The essence of the court's private taking ruling was that the amendments were pretextual and were not connected to the City's asserted interests in affordable housing. The evidence suggesting that the Ordinance was not rationally related to its stated goals is especially relevant in determining whether those stated goals were pretextual. Third, the same entity — the City, and in particular the City Council — was responsible for all the actions challenged in this litigation. Under Schwarz, the unsuccessful due process claim is related to the successful constitutional claim.

The somewhat more difficult issue is whether MHC's state-law claims are related to its taking claim. MHC alleged that by not repealing vacancy control, the City breached the settlement agreement and breached its duty of good faith and fair dealing.

The court determined early on that the contract claims were substantively unrelated to the taking claim. On October 18, 2002, the court prohibited CMHA from participating in the jury trial for this reason. Doc #252. The court stated that CMHA's interest was "limited to * * * [the] defense of the ordinance" and thus CMHA could participate in the taking claim only. On the eve of trial, therefore, the court specifically recognized that the Ordinance's enforcement — the central issue in this litigation and

the focus of MHC's requested relief — was not at stake in MHC's contract claims. The court's determination in 2002 that the contract claims were unrelated to the Ordinance's validity contradicts MHC's argument today that the contract "claims also sought to achieve the same objective as the successful constitutional claims, i e, relief from the effects of the ordinance." Doc #584 at 6.

The relief sought on contract claims was not related to the relief eventually obtained: an injunction against the Ordinance. Consider Hensley, 461 US at 435 ("Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters."). The contract claims were not "alternative legal grounds" for MHC's desired outcome — to enjoin the Ordinance. If MHC had prevailed on its contract claims, it would not have been entitled to specific performance of the settlement agreement. Instead, the City would have paid the monetary "compensatory damages" that MHC requested in its prayer for relief. See Doc #68 (FAC).

Under Schwarz, the question is whether the claims were intended to remedy "the same course of conduct." Schwarz, 73 F3d at 903. Again, the factors to consider are: (1) whether the claims arise from the same core of facts; (2) whether it is likely that some of the work performed in connection with the unsuccessful claims aided the work performed on the merits of the successful claims; and (3) whether the same or different individuals were the primary perpetrators. The court concludes that only at a high

level of generality were the taking claims and state claims intended to remedy "the same course of conduct." Accordingly, the claims are not "related" for the purposes of section 1988.

MHC has not established that the claims arise from the same core set of facts. The facts relevant to MHC's state claims all occurred in 2001, culminating in the City Council's vote against repeal on September 17, 2001. The facts relevant to MHC's taking claim, however, occurred primarily in 1993 and 1999 when the City Council studied and debated the Ordinance. Similarly, the questions whether the City broke a promise or negotiated unfairly are not connected to the question whether the Ordinance takes MHC's property unlawfully. And the reasons for declining to repeal an ordinance — including a reluctance to disrupt reasonable expectations in the housing market — are not necessarily connected to the reasons for enacting the law in the first place. Overall, the relationship between the facts underlying the taking claim and the facts underlying the state claims is unclear, but that uncertainty weighs against the party requesting fees.

On the second Schwarz factor, there is little to suggest that the work performed on the state claims aided the work performed on the Penn Central and private taking theories. MHC's proposed findings of fact and conclusions of law are particularly useful in determining which evidence MHC relied on to support its successful takings theories. See Doc #539. But evidence surrounding the failed settlement agreement did not materially aid MHC's argument that the Ordinance effected a regulatory taking and a private taking.

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The Penn Central argument centered on the reduction in value of MHC's property. That inquiry requires detailed economic analysis of housing markets, not contract interpretation or testimony from City Council members. MHC contends that the failed settlement agreement offered further evidence that the City would not allow MHC to put the park to other economically beneficial uses (see Doc #539 at ¶178). While this fact appears to be true, it does not closely relate to the showing that MHC needed to make, and did make, to establish its taking claim: namely, the ever-increasing premium that the Ordinance extracted from MHC and appropriated to Contempo Marin residents dating from its enactment.

MHC cites statements made by the City in 2001 surrounding the settlement agreement. See Doc #539 at ¶¶47-56. MHC argues that those statements show that the City knew the Ordinance did not create affordable housing, and thus the Ordinance was a pretext to cover up a wealth transfer to politically powerful citizens. Again, despite the apparent accuracy of MHC's observation, invalidity of the Ordinance does not turn on the subjective intent of the authorities enacting it.

The third Schwarz factor — the perpetrator's identity — is neutral here because subjective intent is what counts for purposes of the pretext analysis, and the record is unclear whether City Council membership was constant from 1993 to 2001.

Although it is sometimes difficult to untangle "the hours expended on a claim-by-claim basis" (see Hensley, 461 US at 435), that concern is less present in this case than in most. The state claims did not accrue until September 2001, at which point they were quickly briefed and brought to trial in 2002. There may be

overlap in the evidence used in the jury trial and that used in the original bench trial, but almost all of that evidence had already been collected while pursuing the taking claim.

Accordingly, MHC's unsuccessful breach of contract claims are not "related" to the taking claim for the purposes of section 1988. The court will reduce MHC's number of claimed hours for lack of success on the contract claims.

B

The City, having obtained a jury verdict in its favor on the contract claims, requests its fees and costs incurred in defending against that claim.

The City argues that it is the prevailing party on the contract claims. The settlement agreement states:

> **If any action at law or in equity including an action for declaratory relief is brought to enforce or interpret the terms or provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs * * *.**

Doc #23 Exh 1 at ¶2.14. The agreement states that "all disputes" shall be governed by California law. Id at ¶2.15. California Civil Code § 1717(a) states:

> **In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract * * * shall be entitled to reasonable attorney's fees in addition to other costs.**

Cal Civ Code § 1717(a) (emphasis added). The City argues that even though it lost on the taking claim, it prevailed on the contract claims and is entitled to fees incurred in defending those claims.

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MHC responds that the City "lost the war by choosing to fight this battle" and therefore the court "should find either that MHC prevailed on the settlement agreement claims or that there was no prevailing party on those claims." Doc #584 at 10-11. MHC asserts that the City's loss on the constitutional claim should affect the City's fee request on the contract claims.

The California Supreme Court addressed this issue in Hsu v Abarra, 9 Cal 4th 863 (1995). Hsu analyzed the evolution of section 1717 over six years of amendments. While the statute previously awarded fees to the party that obtained a final judgment in the litigation, the current version made a significant change: "The Legislature replaced the term 'prevailing party' with 'party prevailing on the contract,' evidently to emphasize that the determination of prevailing party for purposes of contractual attorney fees was to be made without reference to the success or failure of noncontract claims." Hsu, 9 Cal 4th at 873-74 (emphasis added). Hsu emphasized that the outcome of a noncontract claim cannot tarnish an unqualified win on the contract claim:

> **[W]hen the results of the litigation on the contract claims are not mixed — that is, when the decision on the litigated contract claims is purely good news for one party and bad news for the other — the Courts of Appeal have recognized that a trial court has no discretion to deny attorney fees to the successful litigant. Thus, when a defendant defeats recovery by the plaintiff on the only contract claim in the action, the defendant is the party prevailing on the contract under section 1717 as a matter of law. * * *.**
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> *** * *.**
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> **Here, the judgment was a 'simple, unqualified win' for [defendants] on the only contract claim between them and [plaintiffs]. In this situation, the trial court had no discretion to deny [defendants] their attorney fees under section 1717 by finding, expressly or impliedly, that there was no prevailing party on the contract. * * *.**

9 Cal 4th at 875-76 (internal citations omitted).

Under Hsu, the court may look to overall litigation success to determine who is the prevailing party only if the result of the contract claim is mixed or ambiguous. The City here obtained an unqualified victory on the MHC's contract claims. Accordingly, Hsu dictates that the City is entitled to reasonable costs and attorney fees incurred in defending those claims.

III

A reasonable attorney fee is the number of hours and the hourly rate that would be billed by "reasonably competent counsel." Venegas v Mitchell, 495 US 82, 86 (1990); Blanchard v Bergeron, 489 US 87 (1989). In Venegas and Blanchard, the reasonable fee awarded by the district court differed from the fee due under the agreement between the fee applicant and the attorney. In each case, the party entered into a contingent fee agreement, prevailed on the merits and obtained an award of reasonable attorney fees. In Blanchard, the court-awarded fees were greater than the amount due under the fee agreement whereas in Venegas, the court-awarded fees were less than the amount due under the fee agreement. In each case, the Supreme Court concluded that the fee agreement was enforceable and did not alter the amount awardable as a reasonable attorney fee. Blanchard, 489 US at 96 (concluding that the "trial judge should not be limited by the contractual fee agreement between plaintiff and counsel"); Venegas, 495 US at 90 (holding that "§ 1988 controls what the losing defendant must pay, not what the prevailing party must pay his lawyer").

Under Venegas and Blanchard, fee applicants are entitled to an award sufficient to "enable them to secure reasonably

competent counsel," but are not entitled to an award "necessary to secure counsel of their choice." Venegas, 495 US at 89-90. Accordingly, courts award the fee that would be charged by reasonably competent counsel, not the fee due under the agreement between the fee applicant and its attorneys. Limiting the award to the fee charged by reasonably competent counsel fulfills the aim of fee-shifting provisions, which is to allow parties to employ reasonably competent counsel "without cost to themselves if they prevail." 495 US at 86. Thus, even if a party chooses to employ counsel of unusual skill and experience, the court awards only the fee necessary to secure reasonably competent counsel.

Reasonably competent counsel bill a reasonable number of hours. Reasonably competent counsel do not bill hours that are "excessive, redundant, or otherwise unnecessary." See Hensley, 461 US at 434. Additionally, the court must take into consideration discounts commonly given to clients and an attorney's ability to collect fees from clients. As Hensley emphasized:

> **In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.**

461 US at 434 (internal quotation omitted; emphasis omitted).

First, the court must determine whether the requested number of hours is greater than, less than or the same number of hours that reasonably competent counsel would have billed. If the requested number of hours is greater than the number of hours reasonably competent counsel would have billed, then the court should reduce the requested number of hours accordingly. See

Hensley, 461 US at 434 (describing the court's duty to eliminate hours that are "excessive, redundant, or otherwise unnecessary"). If the requested number of hours is less than the number of hours reasonably competent counsel would have billed, the court should compensate the fee applicant at an above-average hourly rate. If the requested number of hours is the same as the number of hours reasonably competent counsel would have billed, the court should use the number of hours requested.

Second, the court must determine a reasonable hourly rate. As the parties recognize, it is this court's practice to rely on the so-called Laffey matrix in determining a reasonable hourly rate. See Laffey v Northwest Airlines, Inc, 572 F Supp 354 (DDC 1983), aff'd in part, rev'd in part on other grounds, 746 F2d 4 (DC Cir 1984). In performing a lodestar calculation, the court ensures that the fee applicant receives, and the losing party pays, a reasonable attorney fee; the court need not ensure that the agreement between the fee applicant and its attorneys provides a fair market rate for the attorneys' services. As stated in Venegas, a court's determination of a reasonable attorney fee "controls what the losing defendant must pay, not what the prevailing party must pay his lawyer." Venegas, 495 US at 90.

A

The court now turns to the substance of the fee requests. MHC has filed three documents supporting its accounting of attorney fees. Doc ##585, 600, 610. MHC provided the affidavit of David Bradford, on March 14, 2008, which listed the total attorney hours expended on this case of 10,640.35. Doc #585, Exh E. On April 15,

2008, MHC requested administrative leave to file a supplemental memorandum and the supporting affidavit of Lisa Scruggs (Doc #600), which provided additional documentation in support of MHC's request for costs and attorney fees. See Doc #600, Exh 2. Finally, in response to the court's April 4, 2009 order requesting MHC to resolve several discrepancies between the Bradford affidavit and the Scruggs affidavit, MHC filed David Bradford's supplemental declaration on April 8, 2009.

As a preliminary matter, the court has considered the City's opposition to MHC's request to file the Scruggs affidavit. Doc #602. MHC provided supporting documentation in its initial request for attorney fees and its bill of costs (Doc ##585, 586). MHC felt the need, however, to file a second submission (the Scruggs affidavit, Doc #600) to respond to some of the arguments the City made in its opposition to MHC's initial requests. Doc #600 at 2. The City argues that MHC should be denied this opportunity to supplement the record because the local rules require appropriate supporting documentation for a bill of costs to be filed along with the bill of costs. Civ L R 54-1. Because MHC initially supported its request for attorney fees and bill of costs, but further support became necessary in response to the City's opposition memorandum (Doc #588), the court GRANTS MHC's request for leave to file the Scruggs affidavit. Doc #600.

As a second preliminary matter, the court found several discrepancies between the Bradford affidavit (Doc #585) and the Scruggs affidavit (Doc #600) in the documentation of attorney hours. See Doc #609 (court order requesting MHC to provide an explanation and resolve the discrepancies). In response to the

court's request for an explanation, MHC provided a detailed explanation of discrepancies between the Bradford affidavit and the Scruggs affidavit and submitted updated hour totals. Doc #610. Additionally, MHC submitted the declaration of Patrick Bull, Chief Financial Officer for Jenner & Block, one of the law firms representing MHC, who independently verified that the updated hour totals were correct. Doc #611. Upon close review of MHC's submissions, the court is satisfied with MHC's explanation of the initial discrepancies and the updated hour totals. Moreover, the updated hours total is not significantly different from the previous total (total attorney hours changed from 10,640.35 to 10,760.8). Accordingly, the court will consider MHC's request for attorney fees to include the corrected hour totals listed in Bradford's supplemental declaration. Doc #610, Exh S-1 at 12.

MHC states that its counsel have expended a total of 14,104.9 professional hours in this litigation, which includes attorney time, summer associate time and paralegal time. Doc ##585, Exh E, 610, Exh S-1 (number obtained by making the adjustments shown in exhibit S-1 to the tables presented in exhibit E; see attachment 3, infra). MHC states that the "total amount billed and paid" in "legal fees for professional time" was $3,846,456.87. Doc #585 at ¶17. Using the Laffey 2008-09 rates, the total expended hours produce a lodestar calculation of $4,437,047.97. Attachment 4, infra.

Because MHC was not the prevailing party on its contract claims, see part II A supra, MHC is not entitled to attorney fees for time spent on those claims. At the court's request (Doc #609), MHC submitted documentation of the amount of time each attorney

spent working on MHC's contract claims. Doc #610 at 11. The total number of hours expended on the contract claims, according to MHC, was 3,871.7. This number seems reasonable based on the fact that the City stated that it spent a total of 2896.35 hours opposing those claims. See Attachment 5 (presenting the sum of the total hours presented by the City in Doc #590, Exh C). Accordingly, for each MHC attorney, the court will revise MHC's fee request by reducing each MHC attorney's total hours by the number of hours that attorney worked on the contract claims. See Attachment 4 (presenting the revised hour totals for each MHC attorney and staff group). The adjusted hour total is 10,233.2, for a lodestar of $2,995,612.37. MHC states that it incurred $92,192.05 in computerized research costs, bringing the attorney fee request to $3,087,804.42.

The City describes MHC's fee request as "shocking," stating that "[i]t is difficult to imagine a more defective (and outrageous) fee application." Doc #588 at 8. The City argues that (1) MHC made no attempt to reduce its hours expended to a reasonable amount; (2) the case was overstaffed; (3) the total hours worked is "patently excessive" and "nearly twice the hours incurred by the City" (Doc #588 at 17); (4) the work should be charged at the Laffey rate for the year in which the work was performed rather than the 2007-08 rate; (5) the requested hours are insufficiently documented; (6) the Westlaw and Lexis charges are insufficiently documented; and (7) the fee MHC actually paid is lower than the requested lodestar fee. Doc #588.

As for the City's own fee application, the City states that it spent 2,896.35 hours on the contract claims. Applying the

2008-09 Laffey rate, adjusted for the locality pay differential for the San Francisco Bay area, the lodestar total is $1,191,935.89. Attachment 5; Doc #590, Exh C.

While MHC disputes the award of any legal fees to the City based on MHC's status as a prevailing party (see Doc #595 at 13-15), MHC does not dispute the reasonableness of the City's attorney fee requests. Accordingly, the fee award to MHC will be reduced by $1,191,935.89 to account for the City's attorney fees on the contract claims.

B

The court begins its analysis of the reasonableness of MHC's fee request by determining whether the requested number of hours is greater than the number of hours that reasonably competent counsel would have billed. If so, then the court should reduce the number of hours accordingly. See Hensley, 461 US at 434 (holding that court must eliminate hours that are "excessive, redundant, or otherwise unnecessary").

As noted, MHC claims to have spent 14,104.9 professional hours on this case. The City argues that this claimed number of hours is unreasonable. Specifically, the City argues that MHC used an unreasonable number of attorneys and staff (thirty-two lawyers, six summer associates, ten paralegals and thirteen project assistants), offered no explanation for the use of multiple law firms and requested payment for a substantially larger number of hours than the city required to litigate the same case. Doc #588 at 16-18.

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In Democratic Party of Washington v Reed, 388 F3d 1281 (9th Cir 2004), the Ninth Circuit discussed the use of the opposing party's total fees in evaluating the prevailing party's fee request:

> **While '[c]omparison of the hours spent in particular tasks by the attorney for the opposing party * * * does not necessarily indicate whether the hours expended by the party seeking fees were excessive' because numerous factors can cause the prevailing party to have spent more time than the losing party, such a comparison is a useful guide in evaluating the appropriateness of time claimed. If the time claimed by the prevailing party is of a substantially greater magnitude than what the other side spent, that often indicates that too much time is claimed.**

Id (alterations in original). The City claims to have spent 5,566 attorney hours and 877 paralegal hours on this case. Doc #590, ¶5. This compares to MHC, which spent a total of 10,760.8 attorney hours and 3,286 staff hours. See attachment 3.

While MHC's attorneys and staff spent about double the time the City's attorneys and staff spent, the court finds that MHC's request is reasonable. MHC spent about a third more hours than the City litigating the contract claims (compare 3,871.7 professional hours expended by MHC (Doc #610), with 2896.35 professional hours spent by the City (Attachment 5)). Although this difference is significant in terms of hours, its significance diminishes considering the litigation postures of the parties. MHC was put to the test of attempting to prove the intent of City officials in entering into the settlement agreement. Pinning these officials down was no small task and ultimately unsuccessful. By contrast, all the City needed to do — and did do — was introduce testimony that City officials had not understood the agreement,

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something that did not require much attorney time. A third more hours spent by MHC under the circumstances was not unreasonable.

Most of the difference in time spent on this case was based on the substantial amount of time MHC attorneys spent on the various theories in support of MHC's taking claim. MHC's taking claim was both novel and complicated and the court finds it reasonable that it took a substantial amount of time to pursue. MHC faced enormous challenges stemming from a legal and constitutional landscape in avulsive change. The City had only to react. The court finds that the two-to-one ratio spent on this claim is justified given that MHC was forced to plow new ground in this area of the law.

Accordingly, the court finds that the total hours claimed in MHC's fee request is a reasonable total. The court will reduce the total for each MHC attorney by the amount of time spent on the contract claims — because MHC did not prevail on its contract claims — and award attorney fees based on that adjusted total. See Attachments 3, 4.

C

It is the practice of the undersigned to rely on official data to determine reasonable hourly rates. One reliable official source for rates that vary by experience levels is the Laffey matrix used in the District of Columbia. See United States Attorney's Office for the District of Columbia, Laffey Matrix 2003-09, available at http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix7.html (last visited April 3, 2009), Attachment 1, citing Laffey v Northwest Airlines, Inc, supra.

Under the 2008-09 Laffey matrix, attorneys with 20 or more years experience bill $465/hour; attorneys with 11-19 years experience bill $410 per hour; attorneys with 8-10 years experience bill $330 per hour; attorneys with 4-7 years experience bill $270 per hour; attorneys with 1-3 years experience bill $225 per hour and paralegals and law clerks bill $130 per hour.

These figures are, however, tailored for the District of Columbia, whereas the attorneys who represented MHC were located in Chicago, Santa Ana and San Francisco. The court will adjust these figures accordingly. The locality pay differentials within the federal government approximate these differences. See United States Office of Personnel, Salary Table, available at http://www.opm.gov/oca/08tables//pdf/salhr.pdf (last visited April 3, 2009), Attachment 2 (exerpts). The Washington-Baltimore area has a +20.89% locality pay differential; the Chicago-Naperville-Michigan City, IL-IN-WI area has a 23.16% locality pay differential; the Los Angeles-Long Beach-Riverside, CA area (close to Sanata Ana, CA) has a 25.26% locality pay differential and the San Jose-San Francisco-Oakland, CA area has a +32.53% locality pay differential. Thus, adjusting the Laffey matrix figures upward by the following rates will yield appropriate rates for the corresponding cities: 2% for Chicago[1]; 4% for Santa Ana[2] and 10% for San Francisco[3].

Applying this adjustment and rounding, the court obtains the following rates: (1) for attorneys located in Chicago, the

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[1] **(123.16 — 120.89) / 120.89 = 0.018, or about 2%.**

[2] **(125.26 — 120.89) / 120.89 = 0.036, or about 4%.**

[3] **(132.53 — 120.89) / 120.89 = 0.096, or about 10%.**

following pay rates apply: 20 or more years bill $473/hour, 11-19 years bill $417/hour, 8-10 years bill $336/hour, 4-7 years bill $275/hour, 1-3 years bill $229/hour and paralegals and law clerks bill $132/hour; (2) for attorneys located in Santa Ana, the following pay rates apply: 20 or more years bill $482/hour, 11-19 years bill $425/hour, 8-10 years bill $342/hour, 4-7 years bill $280/hour, 1-3 years bill $233/hour and paralegals and law clerks bill $135/hour; (3) for attorneys located in San Francisco, the following pay rates apply: 20 or more years bill $510/hour, 11-19 years bill $449/hour, 8-10 years bill $362/hour, 4-7 years bill $296/hour, 1-3 years bill $247/hour and paralegals and law clerks bill $142/hour.

The City argues that the court should apply Laffey rates corresponding to the year in which the work was completed rather than current rates. Because this litigation has lasted since 2000 and attorney rates have increased each year since that time, applying Laffey rates applicable at the time the work was completed would result in lower rates.

The court finds, however, that applying present rates to all work done over the course of the litigation is more reasonable. See generally Young v Polo Retail, LLC, 2007 WL 951821 at *6 (ND Cal, Mar 28, 2007). Applying present rates simplifies the calculation and accounts for the time value of money in that the attorney fees were not paid contemporaneously with the work. See Vizcaino v Microsoft Corp, 290 F3d 1043, 1051 (9th Cir 2002), citing Gates v Deukmejian, 987 F2d 1392, 1406 (9th Cir 1992) ("Calculating fees at prevailing rates to compensate for delay in receipt of payment was within the district court's discretion.").

While, as the City points out, MHC's attorneys were paid contemporaneously for their work on this matter, this fact is immaterial for the purposes of determining a reasonable rate at which to award attorney fees after the fact. The purpose of section 1988 is to allow parties to employ reasonably competent counsel "without cost to themselves if they prevail." Venegas, 495 US at 86. Because MHC had to pay its attorney fees contemporaneously and only receives compensation now, the adjusted rates compensate MHC in this case for the time value of the money paid during the course of the litigation.

Additionally, the City requests that the court reduce MHC's attorney fee award based on a so-called Herrington adjustment. See Herrington v County of Sonoma, 883 F2d 739, 742—33 (9th Cir 1989). In Herrington, the Ninth Circuit explained that where there are "special circumstances" that render a particular fee award unjust, the court may depart from "the general rule that prevailing parties are to be awarded fees." Id at 744. The City argues that there are special circumstances in this case warranting a downward adjustment to MHC's attorney fee award. Namely, the City alludes to a statement in Herrington that a plaintiff's pursuit of a "private property right rather than a broader public goal may be considered in setting the amount of fees." Id at 746.

The court finds that no departure is justified here. While MHC had substantial private incentives to challenge the Ordinance, the issues MHC raised in this action have important public policy dimensions. Further, considering the other factors enumerated in Herrington, it would be inappropriate to reduce the attorney fee award here. See Id at 746, citing Kerr v Screen

Extras Guild, 526 F2d 67, 70 (9th Cir 1975). This case presented novel and difficult questions of law and MHC would likely not have been successful without attorneys of considerable skill and experience dedicating extensive time and labor to the case. These facts might have caused the Ordinance to go unchallenged if there were no possibility for recovery of attorney fees for the prevailing party. Accordingly, the court finds the hourly rates outlined above to be reasonable without any downward departure.

D

Attachment 3 presents a table listing the attorneys and staff MHC employed to work on this case. For each attorney and staff group, the table lists the adjusted 2008-09 Laffey rate (based on experience and locality as discussed supra), the total hours spent on the case and the lodestar amount. The sum of the lodestar amounts for all of the MHC attorney and staff hours is $4,437,047.97.

Attachment 4 presents a similar table, but the hours expended by each attorney and staff group are reduced by the number of hours spent on MHC's contract claims. The sum of the lodestar amounts for the MHC attorney and staff adjusted hours is $2,995,612.37.

Attachment 5 presents a similar chart for the City's fee request based on the attorney and staff hours the City spent opposing MHC's contract claims. The lodestar amount for the City's legal fees is $1,191,935.89.

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The City award of $1,191,935.89 offsets the MHC fee award of $2,995,612.37. Accordingly, MHC is entitled to the remaining $1,803,676.48 from the City.

With regard to the appropriate allocation of costs, the parties are DIRECTED to confer to approve of an allocation and award of costs in accordance with the prevailing party determination made herein if they can do so. Hence, Doc #579 and Doc #586 are TERMINATED. If the parties are unable to reach agreement, they shall inform the court, which will refer the matter to the chief magistrate judge or his designee, pursuant to 28 USC § 636.

IT IS SO ORDERED.

VAUGHN R WALKER
United States District Chief Judge

Attachment 1

UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF COLUMBIA
555 4TH STREET, NW
WASHINGTON, DC 20530
(202) 514-7566

LAFFEY MATRIX 2003-2009

Experience	03-04	04-05	05-06	06-07	07-08	08-09
20+ years	380	390	405	425	440	465
11-19 years	335	345	360	375	390	410
8-10 years	270	280	290	305	315	330
4-7 years	220	225	235	245	255	270
1-3 years	180	185	195	205	215	225
Paralegals & Law Clerks	105	110	115	120	125	130

Years (Rate for June 1 — May 31, based on prior year's CPI-U)

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412 (b) (Equal Access to Justice Act). The matrix does not apply in cases in which the hourly rate is limited by statute. See 28 U.S.C. § 2412(d).

2. This matrix is based on the hourly rates allowed by the District Court in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). *See Laffey*, 572 F. Supp. at 371.

3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of $5 (up if within $3 of the next multiple of $5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.

4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n. 14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. *See, e.g., Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

Attachment 2

SALARY TABLE 2008-CHI
INCORPORATING THE 2.50% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 23.16%
FOR THE LOCALITY PAY AREA OF CHICAGO-NAPERVILLE-MICHIGAN CITY, IL-IN-WI
(See http://www.opm.gov/oca/08tables/locdef.asp for definitions of locality pay areas.)
(TOTAL INCREASE: 3.65%)

EFFECTIVE JANUARY 2008

Hourly Basic (B) Rates by Grade and Step
Hourly Overtime (O) Rates by Grade and Step

Grade	B/0	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	B	$ 10.06	$ 10.40	$ 10.73	$ 11.06	$ 11.40	$ 11.59	$ 11.92	$ 12.26	$ 12.27	$ 12.58
	O	*15.09*	*15.60*	*16.10*	*16.59*	*17.10*	*17.39*	*17.88*	*18.39*	*18.41*	*18.87*
2	B	11.31	11.58	11.95	12.27	12.41	12.77	13.14	13.50	13.87	14.23
	O	*16.97*	*17.37*	*17.93*	*18.41*	*18.62*	*19.16*	*19.71*	*20.25*	*20.81*	*21.35*
3	B	12.34	12.75	13.16	13.57	13.99	14.40	14.81	15.22	15.63	16.04
	O	*18.51*	*19.13*	*19.74*	*20.36*	*20.99*	*21.60*	*22.22*	*22.83*	*23.45*	*24.06*
4	B	13.85	14.32	14.78	15.24	15.70	16.16	16.63	17.09	17.55	18.01
	O	*20.78*	*21.48*	*22.17*	*22.86*	*23.55*	*24.24*	*24.95*	*25.64*	*26.33*	*27.02*
5	B	15.50	16.02	16.53	17.05	17.56	18.08	18.60	19.11	19.63	20.15
	O	*23.25*	*24.03*	*24.80*	*25.58*	*26.34*	*27.12*	*27.90*	*28.67*	*29.45*	*30.23*
6	B	17.28	17.85	18.43	19.00	19.58	20.16	20.73	21.31	21.88	22.46
	O	*25.92*	*26.78*	*27.65*	*28.50*	*29.37*	*30.24*	*31.10*	*31.97*	*32.82*	*33.69*
7	B	19.20	19.84	20.48	21.12	21.76	22.40	23.04	23.68	24.32	24.96
	O	*28.80*	*29.76*	*30.72*	*31.68*	*32.64*	*33.60*	*34.56*	*35.52*	*36.48*	*37.44*
8	B	21.26	21.97	22.68	23.39	24.10	24.81	25.51	26.22	26.93	27.64
	O	*31.89*	*32.96*	*34.02*	*35.09*	*36.15*	*37.22*	*38.27*	*38.79*	*38.79*	*38.79*
9	B	23.48	24.27	25.05	25.83	26.62	27.40	28.18	28.97	29.75	30.53
	O	*35.22*	*36.41*	*37.58*	*38.75*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*
10	B	25.86	26.72	27.59	28.45	29.31	30.17	31.03	31.90	32.76	33.62
	O	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*
11	B	28.41	29.36	30.31	31.25	32.20	33.15	34.10	35.04	35.99	36.94
	O	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*
12	B	34.06	35.19	36.33	37.46	38.60	39.73	40.87	42.00	43.14	44.27
	O	*38.79*	*38.79*	*38.79*	*38.79*	*38.79*	*39.73*	*40.87*	*42.00*	*43.14*	*44.27*
13	B	40.50	41.85	43.20	44.55	45.90	47.25	48.60	49.95	51.30	52.65
	O	*40.50*	*41.85*	*43.20*	*44.55*	*45.90*	*47.25*	*48.60*	*49.95*	*51.30*	*52.65*
14	B	47.86	49.45	51.05	52.64	54.24	55.83	57.43	59.02	60.62	62.21
	O	*47.86*	*49.45*	*51.05*	*52.64*	*54.24*	*55.83*	*57.43*	*59.02*	*60.62*	*62.21*
15	B	56.29	58.17	60.05	61.92	63.80	65.68	67.55	69.43	71.31	71.39
	O	*56.29*	*58.17*	*60.05*	*61.92*	*63.80*	*65.68*	*67.55*	*69.43*	*71.31*	*71.39*

SALARY TABLE 2008-LA
INCORPORATING THE 2.50% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 25.26%
FOR THE LOCALITY PAY AREA OF LOS ANGELES-LONG BEACH-RIVERSIDE, CA
(See http://www.opm.gov/oca/08tables/locdef.asp for definitions of locality pay areas.)
(TOTAL INCREASE: 3.52%)

EFFECTIVE JANUARY 2008

Hourly Basic (B) Rates by Grade and Step
Hourly Overtime (O) Rates by Grade and Step

Grade	B/0	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	B	$ 10.23	$ 10.57	$ 10.91	$ 11.25	$ 11.59	$ 11.79	$ 12.13	$ 12.47	$ 12.48	$ 12.80
	O	*15.35*	*15.86*	*16.37*	*16.88*	*17.39*	*17.69*	*18.20*	*18.71*	*18.72*	*19.20*
2	B	11.50	11.78	12.16	12.48	12.62	12.99	13.36	13.73	14.10	14.47
	O	*17.25*	*17.67*	*18.24*	*18.72*	*18.93*	*19.49*	*20.04*	*20.60*	*21.15*	*21.71*
3	B	12.55	12.97	13.39	13.81	14.22	14.64	15.06	15.48	15.90	16.32
	O	*18.83*	*19.46*	*20.09*	*20.72*	*21.33*	*21.96*	*22.59*	*23.22*	*23.85*	*24.48*
4	B	14.09	14.56	15.03	15.50	15.97	16.44	16.91	17.38	17.85	18.32
	O	*21.14*	*21.84*	*22.55*	*23.25*	*23.96*	*24.66*	*25.37*	*26.07*	*26.78*	*27.48*
5	B	15.76	16.29	16.81	17.34	17.86	18.39	18.91	19.44	19.96	20.49
	O	*23.64*	*24.44*	*25.22*	*26.01*	*26.79*	*27.59*	*28.37*	*29.16*	*29.94*	*30.74*
6	B	17.57	18.16	18.74	19.33	19.91	20.50	21.09	21.67	22.26	22.84
	O	*26.36*	*27.24*	*28.11*	*29.00*	*29.87*	*30.75*	*31.64*	*32.51*	*33.39*	*34.26*
7	B	19.53	20.18	20.83	21.48	22.13	22.78	23.43	24.08	24.73	25.38
	O	*29.30*	*30.27*	*31.25*	*32.22*	*33.20*	*34.17*	*35.15*	*36.12*	*37.10*	*38.07*
8	B	21.62	22.35	23.07	23.79	24.51	25.23	25.95	26.67	27.39	28.11
	O	*32.43*	*33.53*	*34.61*	*35.69*	*36.77*	*37.85*	*38.93*	*39.45*	*39.45*	*39.45*
9	B	23.88	24.68	25.48	26.27	27.07	27.87	28.66	29.46	30.26	31.05
	O	*35.82*	*37.02*	*38.22*	*39.41*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*
10	B	26.30	27.18	28.06	28.93	29.81	30.69	31.56	32.44	33.32	34.19
	O	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*
11	B	28.90	29.86	30.82	31.79	32.75	33.71	34.68	35.64	36.60	37.57
	O	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*
12	B	34.64	35.79	36.95	38.10	39.26	40.41	41.56	42.72	43.87	45.03
	O	*39.45*	*39.45*	*39.45*	*39.45*	*39.45*	*40.41*	*41.56*	*42.72*	*43.87*	*45.03*
13	B	41.19	42.56	43.93	45.31	46.68	48.05	49.43	50.80	52.17	53.55
	O	*41.19*	*42.56*	*43.93*	*45.31*	*46.68*	*48.05*	*49.43*	*50.80*	*52.17*	*53.55*
14	B	48.67	50.29	51.92	53.54	55.16	56.78	58.41	60.03	61.65	63.27
	O	*48.67*	*50.29*	*51.92*	*53.54*	*55.16*	*56.78*	*58.41*	*60.03*	*61.65*	*63.27*
15	B	57.25	59.16	61.07	62.98	64.89	66.80	68.70	70.61	71.39	71.39
	O	*57.25*	*59.16*	*61.07*	*62.98*	*64.89*	*66.80*	*68.70*	*70.61*	*71.39*	*71.39*

SALARY TABLE 2008-SF
INCORPORATING THE 2.50% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 32.53%
FOR THE LOCALITY PAY AREA OF SAN JOSE-SAN FRANCISCO-OAKLAND, CA
(See http://www.opm.gov/oca/08tables/locdef.asp for definitions of locality pay areas.)
(TOTAL INCREASE: 4.23%)

EFFECTIVE JANUARY 2008

Hourly Basic (B) Rates by Grade and Step
Hourly Overtime (O) Rates by Grade and Step

Grade	B/0	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	B	$ 10.82	$ 11.19	$ 11.55	$ 11.90	$ 12.26	$ 12.48	$ 12.83	$ 13.19	$ 13.20	$ 13.54
	O	*16.23*	*16.79*	*17.33*	*17.85*	*18.39*	*18.72*	*19.25*	*19.79*	*19.80*	*20.31*
2	B	12.17	12.46	12.86	13.20	13.35	13.74	14.14	14.53	14.92	15.31
	O	*18.26*	*18.69*	*19.29*	*19.80*	*20.03*	*20.61*	*21.21*	*21.80*	*22.38*	*22.97*
3	B	13.28	13.72	14.16	14.61	15.05	15.49	15.93	16.38	16.82	17.26
	O	*19.92*	*20.58*	*21.24*	*21.92*	*22.58*	*23.24*	*23.90*	*24.57*	*25.23*	*25.89*
4	B	14.91	15.40	15.90	16.40	16.90	17.39	17.89	18.39	18.89	19.38
	O	*22.37*	*23.10*	*23.85*	*24.60*	*25.35*	*26.09*	*26.84*	*27.59*	*28.34*	*29.07*
5	B	16.68	17.23	17.79	18.35	18.90	19.46	20.01	20.57	21.12	21.68
	O	*25.02*	*25.85*	*26.69*	*27.53*	*28.35*	*29.19*	*30.02*	*30.86*	*31.68*	*32.52*
6	B	18.59	19.21	19.83	20.45	21.07	21.69	22.31	22.93	23.55	24.17
	O	*27.89*	*28.82*	*29.75*	*30.68*	*31.61*	*32.54*	*33.47*	*34.40*	*35.33*	*36.26*
7	B	20.66	21.35	22.04	22.72	23.41	24.10	24.79	25.48	26.17	26.86
	O	*30.99*	*32.03*	*33.06*	*34.08*	*35.12*	*36.15*	*37.19*	*38.22*	*39.26*	*40.29*
8	B	22.88	23.64	24.41	25.17	25.93	26.69	27.46	28.22	28.98	29.74
	O	*34.32*	*35.46*	*36.62*	*37.76*	*38.90*	*40.04*	*41.19*	*41.75*	*41.75*	*41.75*
9	B	25.27	26.11	26.96	27.80	28.64	29.48	30.33	31.17	32.01	32.85
	O	*37.91*	*39.17*	*40.44*	*41.70*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*
10	B	27.83	28.76	29.68	30.61	31.54	32.47	33.40	34.32	35.25	36.18
	O	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*
11	B	30.58	31.59	32.61	33.63	34.65	35.67	36.69	37.71	38.73	39.75
	O	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*
12	B	36.65	37.87	39.09	40.31	41.53	42.76	43.98	45.20	46.42	47.64
	O	*41.75*	*41.75*	*41.75*	*41.75*	*41.75*	*42.76*	*43.98*	*45.20*	*46.42*	*47.64*
13	B	43.58	45.03	46.48	47.94	49.39	50.84	52.30	53.75	55.20	56.66
	O	*43.58*	*45.03*	*46.48*	*47.94*	*49.39*	*50.84*	*52.30*	*53.75*	*55.20*	*56.66*
14	B	51.50	53.21	54.93	56.65	58.36	60.08	61.79	63.51	65.23	66.94
	O	*51.50*	*53.21*	*54.93*	*56.65*	*58.36*	*60.08*	*61.79*	*63.51*	*65.23*	*66.94*
15	B	60.57	62.59	64.61	66.63	68.65	70.67	71.39	71.39	71.39	71.39
	O	*60.57*	*62.59*	*64.61*	*66.63*	*68.65*	*70.67*	*71.39*	*71.39*	*71.39*	*71.39*

SALARY TABLE 2008-DCB
INCORPORATING THE 2.50% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 20.89%
FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE-NORTHERN VIRGINIA, DC-MD-VA-WV-PA
(See http://www.opm.gov/oca/08tables/locdef.asp for definitions of locality pay areas.)
(TOTAL INCREASE: 4.49%)

EFFECTIVE JANUARY 2008

Hourly Basic (B) Rates by Grade and Step
Hourly Overtime (O) Rates by Grade and Step

Grade	B/0	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	B	$ 9.87	$ 10.20	$ 10.53	$ 10.86	$ 11.19	$ 11.38	$ 11.70	$ 12.03	$ 12.04	$ 12.35
	O	*14.81*	*15.30*	*15.80*	*16.29*	*16.79*	*17.07*	*17.55*	*18.05*	*18.06*	*18.53*
2	B	11.10	11.37	11.73	12.04	12.18	12.54	12.89	13.25	13.61	13.97
	O	*16.65*	*17.06*	*17.60*	*18.06*	*18.27*	*18.81*	*19.34*	*19.88*	*20.42*	*20.96*
3	B	12.11	12.52	12.92	13.32	13.73	14.13	14.54	14.94	15.34	15.75
	O	*18.17*	*18.78*	*19.38*	*19.98*	*20.60*	*21.20*	*21.81*	*22.41*	*23.01*	*23.63*
4	B	13.60	14.05	14.51	14.96	15.41	15.87	16.32	16.77	17.23	17.68
	O	*20.40*	*21.08*	*21.77*	*22.44*	*23.12*	*23.81*	*24.48*	*25.16*	*25.85*	*26.52*
5	B	15.21	15.72	16.23	16.73	17.24	17.75	18.25	18.76	19.27	19.78
	O	*22.82*	*23.58*	*24.35*	*25.10*	*25.86*	*26.63*	*27.38*	*28.14*	*28.91*	*29.67*
6	B	16.96	17.52	18.09	18.65	19.22	19.78	20.35	20.92	21.48	22.05
	O	*25.44*	*26.28*	*27.14*	*27.98*	*28.83*	*29.67*	*30.53*	*31.38*	*32.22*	*33.08*
7	B	18.85	19.47	20.10	20.73	21.36	21.99	22.61	23.24	23.87	24.50
	O	*28.28*	*29.21*	*30.15*	*31.10*	*32.04*	*32.99*	*33.92*	*34.86*	*35.81*	*36.75*
8	B	20.87	21.57	22.26	22.96	23.65	24.35	25.04	25.74	26.44	27.13
	O	*31.31*	*32.36*	*33.39*	*34.44*	*35.48*	*36.53*	*37.56*	*38.09*	*38.09*	*38.09*
9	B	23.05	23.82	24.59	25.36	26.13	26.89	27.66	28.43	29.20	29.97
	O	*34.58*	*35.73*	*36.89*	*38.04*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*
10	B	25.39	26.23	27.08	27.92	28.77	29.62	30.46	31.31	32.16	33.00
	O	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*
11	B	27.89	28.82	29.75	30.68	31.61	32.54	33.47	34.40	35.33	36.26
	O	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*
12	B	33.43	34.54	35.66	36.77	37.89	39.00	40.11	41.23	42.34	43.46
	O	*38.09*	*38.09*	*38.09*	*38.09*	*38.09*	*39.00*	*40.11*	*41.23*	*42.34*	*43.46*
13	B	39.75	41.08	42.40	43.73	45.05	46.38	47.70	49.03	50.35	51.68
	O	*39.75*	*41.08*	*42.40*	*43.73*	*45.05*	*46.38*	*47.70*	*49.03*	*50.35*	*51.68*
14	B	46.97	48.54	50.10	51.67	53.24	54.80	56.37	57.93	59.50	61.06
	O	*46.97*	*48.54*	*50.10*	*51.67*	*53.24*	*54.80*	*56.37*	*57.93*	*59.50*	*61.06*
15	B	55.25	57.10	58.94	60.78	62.62	64.46	66.31	68.15	69.99	71.39
	O	*55.25*	*57.10*	*58.94*	*60.78*	*62.62*	*64.46*	*66.31*	*68.15*	*69.99*	*71.39*

Attachment 3

MHC Attorney Hours at 2008-09 Locality-Adjusted Laffey Rates*

Attorney	Locality	Experience	2008-09 Laffey Rate (per hour)	Total Hours	Lodestar
David Bradford	Chicago	32	473	2,120.5	$1,003,781.09
Lisa Scruggs	Chicago	10	336	2,636.25	$ 885,621.83
Bradley Yusim	Chicago	6	275	680.75	$ 187,110.95
Barry Levenstam	Chicago	30	473	27.5	$ 13,017.68
Terry Mascherin	Chicago	24	473	2	$ 946.74
Mark Heilbrun	Chicago	18	417	14	$ 5,843.32
Matt Basil	Chicago	11	417	241.75	$ 100,901.62
Sean Herring	Chicago	3	229	106.75	$ 24,451.09
Jason Green	Chicago	6	275	254.5	$ 69,951.87
April Otterberg	Chicago	2	229	17.75	$ 4,065.64
Shannon Jones	Chicago	2	229	7	$ 1,603.00
Benjamin Weinberg	Chicago	15	417	1,170.75	$ 488,647.64
Christine Miller	Chicago	11	417	125.5	$ 52,381.19
Therese Tully	Chicago	12	417	135	$ 56,346.30
Nanci Rogers	Chicago	7	275	1,031.75	$ 283,586.81
Daniel Konieczny	Chicago	7	275	1,012.75	$ 278,364.47
Katherine Saunders	Chicago	9	336	170.25	$ 57,193.79
Hannah Stotland	Chicago	6	275	19.75	$ 5,428.49
Robert S Coldren	Santa Ana	30	510	245.3	$ 118,170.82
C William Dahlin	Santa Ana	29	510	253.4	$ 122,072.92
Mark Alpert	Santa Ana	20	510	15.5	$ 7,466.97
Robert Mulvihill	Santa Ana	24	510	15.9	$ 7,659.67
Robert Williamson	Santa Ana	32	510	24.7	$ 11,898.98
William Hart	Santa Ana	32	510	0.4	$ 192.70
Andrew Sussman	Santa Ana	25	510	20.7	$ 9,972.02
Scott Shintani	Santa Ana	11	449	0.5	$ 212.38
Steven Lowery	Santa Ana	11	449	1.2	$ 509.71
Diane Haugeberg	Santa Ana	11	449	5.7	$ 1,948.72
Jason Pyrz	Santa Ana	11	449	18.5	$ 5,174.82
Kenneth Keller	San Francisco	32	482	277.1	$ 141,221.24
Michael Lisi	San Francisco	12	425	0.7	$ 314.55
Ingrid Leverett	San Francisco	18	425	106.7	$ 47,946.71
Chicago Paralegals**	Chicago	0	132	3171	$ 418,572.00
Santa Ana Paralegals	Santa Ana	0	135	15.7	$ 2,119.50
SF Paralegals	San Francisco	0	142	157.4	$ 22,350.80
TOTAL				**14,104.9**	**4,437,047.97**

* Attorney and experience obtained from Doc #585, Exh E. Total hours obtained from Doc #600, Exh 2. 2008-09 Laffey Rate (per hour) derived from Attachment 1 using the multipliers for localities of Chicago (0.018), Santa Ana, Ca (0.036) and San Francisco, CA (0.096). See supra at 21-22 and n1-n3.

** Chicago paralegal hours include summer associate hours listed in Doc #585, Exh E.2.

Attachment 4

MHC Attorney Hours on Non-Contract Claims at 2008-09 Locality-Adjusted Laffey Rates*

Attorney	Locality	Experience	2008-09 Laffey Rate (per hour)	Total Hours	Lodestar
David Bradford	Chicago	32	473	1,543.75	$ 730,764.94
Lisa Scruggs	Chicago	10	336	2,003	$ 672,887.82
Bradley Yusim	Chicago	6	275	361	$ 99,224.46
Barry Levenstam	Chicago	30	473	27.5	$ 13,017.68
Terry Mascherin	Chicago	24	473	2	$ 946.74
Mark Heilbrun	Chicago	18	417	14	$ 5,843.32
Matt Basil	Chicago	11	417	4.5	$ 1,878.21
Sean Herring	Chicago	3	229	106.75	$ 24,451.09
Jason Green	Chicago	6	275	73	$ 20,064.78
April Otterberg	Chicago	2	229	17.75	$ 4,065.64
Shannon Jones	Chicago	2	229	7	$ 1,603.00
Benjamin Weinberg	Chicago	15	417	646.5	$ 269,836.17
Christine Miller	Chicago	11	417	125.5	$ 52,381.19
Therese Tully	Chicago	12	417	135	$ 56,346.30
Nanci Rogers	Chicago	7	275	654.5	$ 179,895.87
Daniel Konieczny	Chicago	7	275	613.5	$ 168,626.61
Katherine Saunders	Chicago	9	336	46	$ 15,453.24
Hannah Stotland	Chicago	6	275	19.75	$ 5,428.49
Robert S Coldren	Santa Ana	30	510	171.5	$ 82,618.41
C William Dahlin	Santa Ana	29	510	194	$ 93,457.56
Mark Alpert	Santa Ana	20	510	4.8	$ 2,312.35
Robert Mulvihill	Santa Ana	24	510	15.9	$ 7,659.67
Robert Williamson	Santa Ana	32	510	0	$ 0.00
William Hart	Santa Ana	32	510	0	$ 0.00
Andrew Sussman	Santa Ana	25	510	20.7	$ 9,972.02
Scott Shintani	Santa Ana	11	449	0.5	$ 212.38
Steven Lowery	Santa Ana	11	449	1.2	$ 509.71
Diane Haugeberg	Santa Ana	11	449	5.7	$ 1,948.72
Jason Pyrz	Santa Ana	11	449	18.5	$ 5,174.82
Kenneth Keller	San Francisco	32	482	18.9	$ 9,632.20
Michael Lisi	San Francisco	12	425	0.7	$ 314.55
Ingrid Leverett	San Francisco	18	425	35.7	$ 16,042.15
Chicago Paralegals**	Chicago	0	132	3171	$ 418,572.00
Santa Ana Paralegals	Santa Ana	0	135	15.7	$ 2,119.50
SF Paralegals	San Francisco	0	142	157.4	$ 22,350.80
TOTAL				**10,233.2**	**$2,995,612.37**

* Attorney and experience obtained from Doc #585, Exh E. Hours obtained by subtracting hours worked on contract claims (Doc #610 at 11) from total hours worked on the case (Doc#610, Exh S-1 at 12; Attachment 3). 2008-09 Laffey Rate (per hour) derived from Attachment 1 using the multipliers for localities of Chicago (0.018), Santa Ana, Ca (0.036) and San Francisco, CA (0.096). See supra at 25 and n1-n3.

** Chicago paralegal hours include summer associate hours listed in Doc #585, Exh E.2.

Attachment 5

City of San Rafael Attorney Hours on Contract Claim at 2008-09 San Francisco Locality-Adjusted Laffey Rates*

Attorney	Locality	Experience	2008-09 Laffey Rate (per hour)	Total Hours	Loadstar
H Sinclair Kerr, Jr	San Francisco	20+	510	323.95	$ 165,097.88
James Wagstaffe	San Francisco	20+	510	483.2	$ 246,258.05
Michael von Loewenfeldt	San Francisco	13	449	815	$ 366,228.40
Rachel Sater	San Francisco	19	449	29.6	$ 13,301.06
Pamela Urueta	San Francisco	12	449	35.6	$ 15,997.22
Timothy Fox	San Francisco	11	449	141.2	$ 63,449.63
Ivo Labar	San Francisco	9	362	736.1	$ 266,232.65
Alex Grab	San Francisco	9	362	37	$ 13,382.16
Paralegal	San Francisco	0	142	294.7	$ 41,988.86
TOTAL				**3,683**	**$1,191,935.89**

* Attorney, experience and total hours obtained from Doc #590, Exh C. 2009 Laffey Rate (per hour) derived from Attachment 1 using the multiplier for the San Francisco locality 0.096. See supra at 25 and n3.