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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

E.R.K., by his legal guardian R.K., R.T.D., through his parents R.D. and M.D.; HAWAI`I DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its clients and all others similarly situated,

Case No. 10-00436 SOM-KSC

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF [292] INTERIM MOTION FOR ATTORNEYS' FEES, FILED NOVEMBER 20, 2015; SUPPLEMENTAL DECLARATION

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION, State of Hawai`i,

Defendant.

OF PAUL ALSTON; EXHIBIT 9; SUPPLEMENTAL DECLARATION OF JENNIFER V. PATRICIO; CERTIFICATE OF SERVICE

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF [292] INTERIM MOTION FOR ATTORNEYS' FEES, FILED NOVEMBER 20, 2015

I. INTRODUCTION

The DOE can scarcely deny that Plaintiffs have achieved significant victories on behalf of the Class in this case. There is therefore no reason to wait until a final settlement or judgment to determine whether to award Class Counsel fees for work performed in 2010-2014. Act 163 has been repealed and the August 2014 award of compensatory education will benefit up to 1,800 people; even the DOE's stingy estimate of the class size (90-400 people) concedes a benefit to many disabled young adults.

The DOE does not challenge and therefore concedes the vast majority of the billing entries listed in Exhibits 5 and 8 of Plaintiffs' Motion. *See* LR 54.3(f). The DOE argues for below-market rates already rejected by the Ninth Circuit for work by the same attorneys in this case, ignores the Ninth Circuit's express determination that IDEA case fee awards are **not** the exclusive guide of the rates in this case, and fails to present evidence rebutting the reasonableness of Plaintiffs' rates. *See* Pls. Ex. 3 (fee order) at 6-10. The DOE's objections to "clerical time," time consulting between attorneys, and

time by more than one attorney at a hearing are unfounded; Plaintiffs' time entries reflect efficient work, which led to substantial success on behalf of their clients between 2010 and 2014.

II. ARGUMENT

A. Plaintiffs are the Prevailing Parties

The DOE does not—because it cannot—dispute the fact that Plaintiffs are the prevailing parties, having secured a reversal of Judge Ezra's flawed decision by winning this case in 2013 before the Ninth Circuit and then securing additional rights for the older Class Members before the district court in 2014. *See* DOE Opp. (ECF No. 303) at 2-3. The DOE's argument for denying Class Counsel's interim fee motion nevertheless advocates treating Plaintiffs as if they had not yet prevailed, supposedly because the extent of success is unknown. That argument is baseless.

The Ninth Circuit ruled that Act 163 was illegal under the IDEA, and the court later expressly determined that Plaintiffs were the prevailing parties. *See* Pls.' Mot. (ECF No. 292) Exs. 2-3. The Ninth Circuit's reversal of the district court directly resulted in the repeal of Act 163, restoring a right to attend school to many of Hawaii's most vulnerable young adults. This was a novel ruling

inasmuch as required Plaintiffs to demonstrate that the Community Schools for Adults were the equivalent of "free public education" and so did not exempt the State from its requirements under the IDEA. *Cf. M.L. v. Fed. Way Sch. Dist.*, 401 F. Supp. 2d 1158, 1169 (W.D. Wash. 2005) (granting enhanced fee award based on the novelty and precedential significance of the success achieved).

The DOE's sole dispute on this issue amounts to a vague "wait and see" argument that there may be fewer than 1,800 Class Members eligible for compensatory education, and so the Court should see how many there are and what they receive before awarding attorney's fees to Class Counsel. *See* DOE Opp. at 5-7. But the DOE offers no evidence that either of these factors would negatively influence Plaintiffs' fee request. *Cf.* Local Rule 54.3 (requiring Party opposing the fee award to justify its opposition with specific facts and evidence—not simply vague statements); *Face Action for Community Equity v. Haw. Dep't of Transportation*, 2015 WL 5162477, at *6 n.1 (D. Haw. Sept. 1, 2015) (considering any time entry not specifically identified by Defendants as undisputed).

Indeed, the DOE ignores the math. Plaintiffs are requesting approximately $234,000 for Class Counsel's work associated with

(1) repeal of Act 163 and (2) winning the right to compensatory education for the older Class Members. Even if the substantial value of the repeal of Act 163 were ignored, and even there were only 90 Class Members, as the DOE asserts, winning the right to compensatory education would nevertheless represent a considerable benefit to each Class Member. The interim fee request of $234,000 works out to only $2,600 per class member, a significant savings to the DOE as compared with the comparable fees associated with 90 individual IDEA lawsuits. *Cf. I.T. ex rel. Renee T. v. Dep't of Educ.*, 18 F. Supp. 3d 1047, 1055 (D. Haw. 2014) (awarding fees of $31,000 on recovery to single disabled child worth $44,000). Assuming Plaintiffs' numbers regarding the Class size are correct, attorney's fees per person total $130 for work performed over four years' time—an undeniably reasonable request.

B. The Requested Fees Are Reasonable

1. Class Counsel's Rates, Several of Which Were Already Approved by the Ninth Circuit, Are Reasonable in Light of Counsel's Experience and the Complexity of this Case

DOE contends that all attorneys working on this matter should be compensated at rates no greater than $150 per hour, except for Mr. Alston and Ms. Floyd, whose rates should be set at

$300 per hour. DOE Opp. at 12.[1] This sort of baseless argument reflects, apparently, the Defendant's hope that suggesting unreasonable rates will lead the court to adopt compromise numbers. The DOE should not be rewarded for refusing to present reasonable numbers and arguments.

The DOE ignores entirely the Ninth Circuit's May 2015 order, which **already approved** several of the rates being requested here

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[1] The rate of $150 per hour reflects the DOE's proposed rate for Ms. Patricio, whom the DOE asserts has the most experience in IDEA litigation. *See* DOE Opp. at 11. This statement entirely ignores the significant experience of Mr. Alston, who has litigated IDEA cases for over 40 years. *See* Decl. Paul Alston ¶¶ 8-10. Moreover, AHFI and HDRC bring complementary skills to this case, avoiding duplicative work and creating efficiencies and synergies in favor of the Class Members. AHFI attorneys who do not have as much IDEA experience as Ms. Patricio and the other HDRC counsel instead bring to the table valuable litigation experience in complex cases and class actions, as well as the resources of a large firm. *See id.* ¶¶ 12, 17; *cf. LV v. New York City Dep't of Educ.*, 700 F. Supp. 2d 510, 515 (S.D.N.Y. 2010) ("A class action like this one requires a large number of skills, many of them unrelated to intimate knowledge of the relevant law.").

As for Ms. Patricio, the DOE's proposal to pay $150 per hour is far below the current market rate for her work. The Court awarded $150 per hour in 2014 to an attorney who had passed the bar the year before. *See D.S. ex rel. Clarenore S. v. Dep't of Educ.*, 2014 WL 2761709, at *1-*2 (D. Haw. June 17, 2014). Ms. Patricio has practiced law at HDRC for over seven years and has **never** increased her hourly rate of $125 until late last year. Decl. Jennifer V. Patricio ¶¶ 4-5. After doing research into market rates, Ms. Patricio determined her rate should be higher. *See id.*

(for Mr. Alston, Mr. Bassett, Mr. Kim, and Ms. Guadagno). Plaintiffs have simply added inflation to those rates to account for the passage of time. *Cf.* Ex. 3 at 9-10 ("reasonable increase" to prior rate appropriate to account for passage of time).

And, more importantly, the majority of those rates (as to the Alston firm, at least) are **the same or less** than the rates the firm currently charges and is paid by sophisticated clients, day in and day out. *See* Alston Decl. (ECF No. 292-2) ¶ 17(a) (citing rates for P. Alston); Supp. Decl. Paul Alston ¶ 5 (rates for J. Kim, C. Eads, C. Black, A. Abouzari, M. Comeau, M. Osika, K. Paek, K. Guadagno, law clerks, and document analysts).

The DOE's response—the naked assertion that $150 should be the cap for all attorneys save Mr. Alston and Ms. Floyd, who should receive $300 per hour—is not "evidence" that may be considered and weighed by the Court. *See* DOE Opp. at 11-12. Plaintiffs' rates are therefore presumptively reasonable. *Cf. U.S. v. $28,000 in U.S. Currency*, 802 F.3d 1100, 1106 (9th Cir. 2015) (presumption of reasonableness attaches to market fee rates supported by unchallenged evidence). *See also Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir. 2008) (market rate should be

commensurate with what counsel could be awarded for taking other types of cases); *Carson v. Billings Police Dep't*, 470 F.3d 889, 892 (9th Cir. 2006) (lawyer's actual rate is evidence of what the market rate is "because the lawyer and his clients are part of the market"); *Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 640 (7th Cir. 2011) (applying presumption that attorney's actual billing rate for similar litigation is appropriate market rate).

The DOE's primary basis for objecting to counsel's rates appears to be that the rates are higher than the DOE's perception of what an IDEA case is worth. This, too, is not evidence sufficient to deny Plaintiffs a presumption of reasonableness. The DOE again ignores the Ninth Circuit's fee order, which considered and rejected the identical argument. *See* Pls.' Mot. Ex. 3 at 7 ("The DOE argues that $300 per hour should be awarded for Alston, because that is the highest rate that the Hawaii district court has allowed in IDEA cases. This argument lacks merit."), 9 (same for Mr. Kim), 10 (same for Mr. Bassett).

The court instead recognized that rates must be awarded to counsel commensurate with those rates counsel could obtain by taking other kinds of cases, "to reflect Congress's intent in the

IDEA's fee-shifting provision to encourage counsel to undertake IDEA cases." *Id.* at 7; *accord M.L.*, 401 F. Supp. 2d at 1169-70 (reviewing attorney rates based on experience in all types of litigation, not simply IDEA law, and noting that the dearth of attorneys practicing IDEA law suggested a *Kerr* increase was warranted for what appeared to be "undesirable" litigation). Therefore, as recognized by the Ninth Circuit, commercial rates represent the appropriate yardstick by which AHFI's and HDRC's rates are measured.

Moreover, as discussed in Plaintiffs' motion, this is not an ordinary IDEA case. It is a complex civil rights class action, meriting a higher market rate commensurate with the skills required to bring such cases. *See LV v. New York City Dep't of Educ.*, 700 F. Supp. 2d 510, 515 (S.D.N.Y. 2010) (holding that attorneys' rates in IDEA class action should be awarded based on "similarly complex civil rights cases, remembering that lawyers with the skills and resources necessary to litigate this case generally command higher rates"); *A.D. ex rel. L.D. v. Dep't of Educ.*, 2014 WL 692910, at *4 (D. Haw. Feb. 20, 2014) (noting requirement to examine rates in the community for similar work, not simply IDEA

rates); *accord Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) ("Although the state officials urge us to look only to the rates charged by other attorneys involved in prison litigation, the proper scope of comparison is not so limited, but rather extends to all attorneys in the relevant community engaged in equally complex Federal litigation, no matter the subject matter.").

Finally, the United States Supreme Court has rejected the DOE's contention that Plaintiffs should be paid less than their current hourly rate because the work was performed in prior years. Where attorneys must wait years for payment—such as here—the proper rate on a fee award reflects the time value of that money. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989). The Court noted that private billings are typically paid as the time is incurred, and compensation received several years after services rendered is not equivalent to the same dollar amount paid promptly. The Court also noted that the expenses of doing business have continued during the time counsel waited for payment. *See id.*

2. Time Spent Was Billed Appropriately

The DOE's objections to specific line items, which total $7,939.26, are unfounded. "By and large, the [district] court should defer to the winning lawyer's professional judgment as to how much time he [or she] was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). In the exercise of billing judgment, before presenting the current request Plaintiffs voluntarily deducted approximately 14% of their time in an effort to avoid controversy; the remaining entries, which total approximately $234,000, represent a modest fee for the substantial success achieved between 2010 and 2014 in this case.

Clerical work – Many of the entries to which the DOE objects do not reflect noncompensable "clerical" work but rather preparation by attorneys for trial and for hearings, or other legal work required for the case. For example, Mr. Kim's communications with a law clerk on June 29 and 30, 2011, relate to a research assignment for the law clerk.[2] Mr. Alston's review of

[2] The DOE's summary of these entries leaves out substantive information regarding the purpose of meeting or communications. For example, the DOE summary for this entry reads "Email with law clerk," but the entire entry is properly set forth in Exhibit 5.

draft documents being prepared by other attorneys, such as summary judgment briefing (on August 22, 2011) and a letter to opposing counsel (on August 23, 2011)[3] reflect substantive review by Mr. Alston; this is essential legal work by a supervisory attorney. Likewise, Mr. Alston's June 16, 2014, communications with the paralegal in charge of preparing the evidence in support of Plaintiffs' motion for compensatory education reflect Mr. Alston's substantive instructions to allow the paralegal (who has a significantly lower billing rate) to then properly select and prepare the evidence.

Attorney conferences – The attorney conferences and correspondence should be compensable. "The need for multiple counsel in complex class action litigation is well recognized." *U.S. v. City & County of S.F.*, 748 F. Supp. 1416, 1421 (N.D. Cal. 1990). Courts have recognized that "conferences between an associate and a supervising partner are necessary to effective and diligent

[3] The DOE also argues, incorrectly, that time spent preparing an application for attorney's fees is noncompensable. *See* DOE Opp. at 13; *cf. Gonzalez v. City of Maywood*, 729 F.3d 1196 (9th Cir. 2013) (time spent preparing fee attorney fee applications is compensable). Indeed, in the *Melodee* case cited by the DOE, the court did award Plaintiffs their fees associated with preparing the fee application. *See Melodee H. ex rel. Kelii H. v. Dep't of Educ.*, 2008 WL 4344701, at *5 n.3. In any event, the DOE points to no time it actually objects to on this basis.

representation, and in the end reduce the amount of unnecessary time spent on a case." *Mass. Dep't of Pub. Health v. Sch. Comm. of Tewksbury*, 841 F. Supp. 449, 459 (D. Mass. 1993); *accord M.L.*, 401 F. Supp. 2d at 1169-70 (declining to reduce fees for attorney conferences, noting that attorney conferences often led to greater efficiencies in a case); *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 898 (E.D. Cal. 2009) (in a complicated suit, communication among attorneys "was undoubtedly essential to their effective representation of their clients"). Conversely, inadequate partner supervision would result in unnecessary time by relatively inexperienced lawyers. *See, e.g., Copeland v. Marshall*, 641 F.2d 880, 903 & n.50 (D.C. Cir. 1980) (reducing lodestar).

Here, with the exception of a group conference following the Ninth Circuit remand on October 1, 2013, and a call between Ms. Comeau and Ms. Abouzari to discuss motion strategy on June 2, 2014, all of the attorney conferences and emails were between attorneys in a supervisory relationship. *See* DOE Opp. at 16-17.[4] These communications should be compensated because they

[4] Even communications among attorneys with the same level of experience are not automatically duplicative, unless the billing is not reasonable. *See Tewksbury*, 841 F. Supp. at 459.

allowed for efficient staffing of the case. Associate-level attorneys, at lower billing rates, maintain primary day-to-day responsibility for the case, while Mr. Alston and Mr. Erteschik supervise their work and give direction as and when needed. In this way, the work can be performed efficiently and effectively by younger lawyers at an overall lower cost.

Some form of written or oral communications among team members is necessary so that each team member can be up to speed when preparing court submissions or communicating with clients or opposing counsel. Occasional conferences between attorneys therefore increased efficiency and effectiveness through sharing of information and strategy and allocating of tasks. And, as noted in Plaintiffs' Motion, approximately 14% of Plaintiffs' time on this matter was already reduced by AHFI in an exercise of billing judgment.

Thus, conference time between Plaintiffs' attorneys, whether in person, on the phone, or via email, was reasonably related to increasing efficiency and enhancing the representation of Plaintiffs and should be compensable.

Multiple attorney attendance at hearings – Courts have recognized that in legally or factually complex cases, multiple attorney attendance at hearings is appropriate and compensable. *See, e.g.*, *Probe v. State Teachers' Retirement Sys.*, 780 F.2d 776, 785 (9th Cir. 1986) ("[I]n an important class action litigation such as this, the participation of more than one attorney does not constitute an unnecessary duplication of effort."); *Moore v. Verizon Commc'ns, Inc.*, 2014 WL 588035 (N.D. Cal. Feb. 14, 2014) (in complex class action, no deduction warranted for multiple attorneys to "be present and to participate in the important aspects of the litigation"); *Thompson v. County of Santa Clara*, 1990 WL 300239, at *21 (N.D. Cal. 1990) (approving fees for multiple attorney attendance at hearings due to complexity of case).

As discussed above and in Plaintiffs' Motion, this is a complex class action requiring the work of two firms and multiple attorneys, spanning a period of years.[5] Multiple attorney attendance at the status conferences and motion hearings cited by the DOE ensured (1) the the ability of a second chair to participate and contribute as

[5] Indeed, the DOE concedes as much; it has sent two or three attorneys to nearly every status conference held before the Court since 2013.

necessary (particularly where the second chair attorney held primary day-to-day responsibility); and (2) the ability of both HDRC and AHFI to contribute to the representation of Plaintiffs.

Plaintiffs also note that the DOE's revised billing for hearing attendance improperly sets Mr. Alston's rate at $300.00 per hour. *See* DOE Opp. at 19; *see also supra* at Part II.B.1.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant its motion and award **$234,949.20** in fees ($221,215.10 to AHFI and $13,734.10 to HDRC). These fees were reasonably and necessarily incurred in prevailing in this action through August 22, 2014.

DATED: Honolulu, Hawai`i, January 7, 2016.

/s/ Michelle N. Comeau
PAUL ALSTON
KRISTIN L. HOLLAND
MICHELLE N. COMEAU
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

E.R.K., by his legal guardian R.K.; R.T.D., through his parents R.D. and M.D.; HAWAI'I DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its clients and all others similarly situated,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION, State of Hawai`i,

Defendant.

Case No. 10-00436 SOM-KSC

SUPPLEMENTAL DECLARATION OF PAUL ALSTON

SUPPLEMENTAL DECLARATION OF PAUL ALSTON

I, PAUL ALSTON, do hereby declare that:

1. I am an attorney and a director with the law firm of Alston Hunt Floyd & Ing ("AHFI"), counsel for Plaintiffs in this action.

2. Unless otherwise stated, I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. I make this Supplemental Declaration in support of *Plaintiffs' Interim Motion for Attorneys' Fees* (ECF No. 292).

4. I am lead counsel for Plaintiffs, who prevailed in this matter.

5. As detailed in my prior declaration, which is evidence that is undisputed by the DOE, my current hourly rate to private clients is $750, nearly 20% higher than the rate billed in this fee application. As set forth in his declaration to the Ninth Circuit, in 2013, Mr. Kim's standard rate at Schneider Wallace Cottrell Brayton and Konecky, LLP, was $600 per hour—close to twice the rate sought here. Attached hereto as **Exhibit 9** is a true and correct copy of Mr. Kim's declaration. Likewise, for Ms. Black and Ms. Guadagno, the rate billed in this case is less than their standard market rate (Ms. Black's rate is $265.00 and Ms. Guadagno's rate prior to her departure from the firm was $150.00). For Chrystn K.A. Eads, Michelle N. Comeau, Maile B. Osika, the rate billed in this case is the same as the rate that is customarily charged to—and paid by—our commercial clients for their work. Aryanna Abouzari and Kyu (Mike) Y. Paek, who have since left the

firm, are billed at rates equivalent to their standard market rate at the time they left the firm.

6. As a supplement to paragraph 17 of my prior declaration dated November 20, 2015, the relevant qualifications and experience of Maile B. Osika (MAOS) are as follows: Ms. Osika has been admitted to practice before all courts in the State of Hawai`i since 2012. She has two years of litigation experience, which includes complex commercial cases as well as other Plaintiffs' side class action litigation against the State of Hawai`i. She also has one year of experience as a legislative attorney for the House Majority Staff Office at the Hawai`i House of Representatives. Ms. Osika's hourly rate of $175.00 in this matter is, to my knowledge, well within the range of reason for attorneys with similar experience in this community.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 7, 2016.

PAUL ALSTON

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

E.R.K., by his legal guardian R.K., R.T.D., through his parents R.D. and M.D., and the HAWAII DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its clients and all other similarly situated, Plaintiffs-Appellants, vs. DEPARTMENT OF EDUCATION, State of Hawai'i, Defendant-Appellee.	NO. 12-16063 D.C. No. 1:10-cv-00436 DAE-KSC District of Hawai'i, Honolulu

DECLARATION OF JASON H. KIM

Pursuant to Ninth Circuit Rule 39-1.6, I declare that:

1. I am an attorney and counsel with the law firm of Schneider Wallace Cottrell Konecky LLP ("SWCK"), counsel for Plaintiffs-Appellants E.R.K., by his legal guardian R.K., R.T.D., through his parents R.D. and M.D., and the HAWAI'I DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its

EXHIBIT 9

clients and all other similarly situated ("HDRC") (collectively "Plaintiffs-Appellants") in this matter.

2. Unless otherwise stated, I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. I make this Declaration in support of the Plaintiffs-Appellants' Application for Attorneys' Fees.

4. Prior to joining SWCK, I was counsel at Alston Hunt Floyd & Ing ("AHFI") in Honolulu, Hawai'i.

5. While at AHFI, I tried this matter before the district court and otherwise had responsibility for the prosecution of this case under the supervision of Paul Alston.

6. I moved from AHFI to SWCK in or about April 2012, a few months after the district court trial. SWCK then associated as co-counsel with AHFI for this matter so I could continue my involvement with this case on appeal.

7. I drafted the Opening and Reply Brief for this appeal and argued before the panel of this Court. Because of my role in this case before the district court, I was the most familiar

with the trial court record and the legal issues involved in this case.

8. Attached as Exhibit "1" is a true and accurate itemization of the time expended and amounts billed by SWCK in this appeal, organized chronologically, followed by a summary organized in accordance with the categories on Ninth Circuit Form 9. Pursuant to Ninth Circuit Rule 39-1.6(b)(1), the itemization describes the tasks performed each date and the amount of time I spent on each task. I am the only timekeeper from SWCK that billed compensable time to this matter. Exhibit "1" is derived from SWCK's computerized billing system. The descriptions therein were inputted at or near the time the work was performed. This summary is submitted without waiver of attorney-client privilege or the protection afforded by Plaintiffs-Appellants by the attorney work-product doctrine.

9. I have been admitted to practice in the State of Hawai'i since 1998 and admitted to practice in the State of California since 2002. I have also been admitted to practice in the U.S. Court of Appeals for the Ninth Circuit for several years.

10. I have fifteen (15) years of experience in complex commercial and civil rights litigation. I have substantial experience in representing plaintiff classes in federal civil rights / public benefit litigation, both at the district court level and on appeal. Among other cases, I briefed and argued *Lovell v. Chandler*, 303 F.3d 1039 (9th Cir. 2002) before this Court. I was also appointed class counsel (along with Mr. Alston and others) for the plaintiff classes in *McMillon v. State of Hawaii*, 261 F.R.D. 536 (D. Haw. 2012) and *Blake v. Nishimura*, No. 08-00281 LEK, 2010 WL 363203 (D. Haw. Jan. 29, 2010), both of which settled on terms favorable to the class.

11. I have reviewed the time and charges set forth in Exhibit "1," all of which reflect work that I did personally. Based on my experience, the time spent was reasonable and necessary under the circumstances of this case.

12. The total amount of fees requested attributable to SWCK was calculated by multiplying the number of hours actually worked by me (100) by my corresponding billing rate ($500). Thus, an aggregate amount of fees through the filing of this Declaration is $50,000.

13. $500 is a reasonable hourly fee for an attorney with my level of experience in the San Francisco / national class action market and is in fact $100 less than the rate at which my time is normally recorded at SWCK. SWCK specializes in representing plaintiffs in class and collective action litigation in federal and state courts around the country. Attorneys at SWCK have routinely been awarded attorneys' fees in class action and collective action cases at similar hourly rates (as adjusted for relative experience and the time the orders were issued). Attached as Exhibit "4" is a sampling of orders from fee applications by SWCK that have approved hourly rates as high as $675 per hour for SWCK partners.

14. If the Court chooses to set the reasonable rate for my time based on the Honolulu market, I believe $300 per hour is a reasonable rate for that market based on my level of experience. This rate is supported by Paul Alston's declaration and the exhibits referenced therein.

15. The Petition to which this Declaration is attached is timely filed. The Court's order was issued on August 28, 2013. Pursuant to Fed. R. App. Proc. 40, Defendants had fourteen (14)

days to seek rehearing. And pursuant to Ninth Circuit Rule 39-1.6, a request for attorneys' fees shall be filed no later than fourteen (14) days after the expiration of the period within which rehearing may be filed unless a timely petition is actually filed, which did not occur in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Francisco, California on September 25, 2013.

/s/ Jason H. Kim
JASON H. KIM

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

E.R.K., by his legal guardian R.K.; R.T.D., through his parents R.D. and M.D.; HAWAI'I DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its clients and all others similarly situated, Plaintiffs, vs. DEPARTMENT OF EDUCATION, State of Hawai`i, Defendant.	Case No. 10-00436 SOM-KSC **SUPPLEMENTAL DECLARATION OF JENNIFER V. PATRICIO**

SUPPLEMENTAL DECLARATION OF JENNIFER V. PATRICIO

I, JENNIFER V. PATRICIO, do hereby declare that:

1. I am an attorney with the Hawai`i Disability Rights Center ("HDRC"), counsel for Plaintiffs in this action.

2. I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

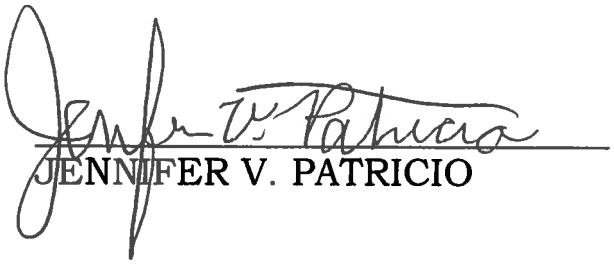
3. I make this Supplemental Declaration in support of *Plaintiffs' Interim Motion for Attorneys' Fees* (ECF No. 292).

4. During my 7+ years at HDRC, I have filed and resolved numerous IDEA cases and litigated other types of cases in administrative proceedings on behalf of clients with disabilities. I am one of only a handful of attorneys who regularly practice special education law on behalf of the individuals with disabilities in Hawai`i.

5. I have been licensed to practice law in Hawai`i since 2007. I have never increased my rate from $125 per hour during that time. After doing some research last year, I decided my rate should be increased and began to do so incrementally. I submitted three timesheets to the DOE in the last 3 months with an hourly rate of $180. Those timesheets were for work performed in normal due process cases. This case is substantially more complex in a legal and factual sense.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 6, 2016.



JENNIFER V. PATRICIO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date and method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served electronically through CM/ECF on January 7, 2016:

Carter K. Siu, Esq.	Carter.K.Siu@hawaii.gov
Holly T. Shikada, Esq.	Holly.T.Shikada@hawaii.gov
Ryan W. Roylo, Esq.	Ryan.W.Roylo@hawaii.gov

Attorneys for Defendant
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, January 7, 2016.

/s/ Michelle N. Comeau
PAUL ALSTON
KRISTIN L. HOLLAND
MICHELLE N. COMEAU
Attorneys for Plaintiffs

DONNA AHUNA - Activity in Case 1:10-cv-00436-SOM-KSC P.-K. et al v. Department of Education, State of Hawai'i Reply to Response to Motion

From: <hid_resp@hid.uscourts.gov>
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Date: 1/7/2016 4:10 PM
Subject: Activity in Case 1:10-cv-00436-SOM-KSC P.-K. et al v. Department of Education, State of Hawai'i Reply to Response to Motion
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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Comeau, Michelle on 1/7/2016 at 4:09 PM HST and filed on 1/7/2016

Case Name: P.-K. et al v. Department of Education, State of Hawai'i
Case Number: 1:10-cv-00436-SOM-KSC
Filer: M. D.
R. T. D.
Hawaii Disability Rights Center
E.R. K.
Document Number: 314

Docket Text:
REPLY to Response to Motion re [292] Interim MOTION for Attorney Fees filed by M. D., R. T. D. (through his parents R.D. and M.D., for themselves and on behalf of a class of those similarly situated,), R. D., Hawaii Disability Rights Center, E.R. K.. (Attachments: # (1) Supplemental Declaration of Paul Alston, # (2) Exhibit 9: 9/25/13 Declaration of Jason H. Kim, # (3) Supplemental Declaration of Jennifer V. Patricio, # (4) Certificate of Service)(Comeau, Michelle)

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Document description: Main Document
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Electronic document Stamp:
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Document description: Supplemental Declaration of Paul Alston
Original filename:n/a
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Document description: Exhibit 9: 9/25/13 Declaration of Jason H. Kim
Original filename:n/a
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Document description: Supplemental Declaration of Jennifer V. Patricio
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