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19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA

21 ISIDORA LOPEZ-VENEGAS, *et al.*,

22 Plaintiffs,

23 v.

24 JEH JOHNSON, *et al.*,

25 Defendants.  
26  
27  
28

No. CV 13-03972-JAK (PLAx)

**DECLARATION OF DAVID LOY IN  
SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND COSTS**

**Date: February 9, 2015  
Time: 8:30 a.m.  
Place: Courtroom 750  
Judge: Hon. John A. Kronstadt**

**DECLARATION OF DAVID LOY**

I, David Loy, declare and state as follows:

1. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Costs. I have personal knowledge of all matters stated in this declaration and if called to testify, I could and would do so competently.

2. I am an attorney licensed to practice in California and New York; the United States Supreme Court; the United States Court of Appeals for the Ninth Circuit; and the United States District Courts for the Northern, Central, and Southern Districts of California; as well as other courts. I have also been admitted to practice in Illinois and Washington, though I am on inactive status in those states. I am currently employed as legal director for the ACLU Foundation of San Diego and Imperial Counties (“ACLU SDIC”). Attached hereto as Exhibit A is a true and correct copy of my resume.

3. I graduated from Northwestern University School of Law in 1994, *magna cum laude*, Order of the Coif, and clerked for the Hon. Dolores K. Sloviter, then-Chief Judge of the United States Court of Appeals for the Third Circuit.

4. From August 1995 to July 1997, I was a staff attorney with Office of the Appellate Defender in New York City, litigating criminal appeals and state and federal habeas cases. I obtained reversal or vacation of conviction or sentence in several cases.

5. From August 1997 to March 2000, I was an assistant public defender in Spokane, Washington, representing defendants in misdemeanor and felony criminal cases, including numerous successful motions to suppress evidence and dismiss charges, several jury trials resulting in acquittal, and several appeals resulting in reversal of conviction.

6. From March 2000 until November 2004, I was a staff attorney with the Center for Justice in Spokane, practicing civil rights, First Amendment, open government, fair housing, landlord-tenant, and consumer protection law. In that

1 position, I was lead or sole counsel in numerous civil cases and certain criminal  
2 matters, engaging in every aspect of state and federal practice, including  
3 investigation and filing of complaints, dispositive motion practice, discovery, and  
4 appeals. I argued cases in state and federal trial courts as well as the Washington  
5 Court of Appeals, Washington Supreme Court, and Ninth Circuit. For example, I  
6 developed and litigated a landmark public records case resulting in a published  
7 decision by the Washington Supreme Court, *Spokane Research & Def. Fund v. City*  
8 *of Spokane*, 155 Wash. 2d 89, 117 P.3d 1117 (2005), and payment of several  
9 hundred thousand dollars in attorneys' fees and penalties. Also, while representing  
10 the plaintiff in a federal excessive force case against two law enforcement officers,  
11 I pursued state court collateral proceedings to obtain an order vacating the  
12 plaintiff's conviction for resisting arrest, the preclusive effect of which had been a  
13 linchpin of the officers' defense, after which I defeated the officers' summary  
14 judgment motions, obtained summary judgment on their counterclaims for  
15 defamation and malicious prosecution that was affirmed on appeal, and settled the  
16 case on terms favorable to the plaintiff. *Ostrander v. Madsen*, No. CV-99-00017-  
17 WFN (E.D. Wash.), *on appeal*, Nos. 00-35506, 00-35538, 00-35541, 2003 WL  
18 193565 (9th Cir. Jan. 28, 2003).

19 7. From November 2004 to April 2006, I was in private practice in San  
20 Diego, litigating civil motions and appeals, including a published decision, *Hecht,*  
21 *Solberg, Robinson, Goldberg & Bagley v. Superior Court*, 137 Cal.App.4th 579  
22 (2006), as well as numerous criminal appeals, including several that resulted in  
23 reversal of conviction or resentencing. I was also lead counsel in an evidentiary  
24 hearing in a federal habeas action in this court. *Maxwell v. Roe*, No. ED CV 01-  
25 00131 SGL (RZ).

26 8. Since April 17, 2006, I have been legal director for ACLU SDIC. As  
27 such, I carry an active caseload, supervise four full-time lawyers, and oversee a  
28 complex civil liberties and constitutional law docket.

1           9.     I am one of the attorneys of record for Plaintiffs in this action. Before  
2 its commencement, I supervised the underlying investigation and engaged in  
3 ongoing discussion about the legal theories ultimately pleaded in the complaint. I  
4 have also supervised and participated in this action since its commencement.

5           10.    In particular, I participated in the intensive settlement negotiations  
6 described in the declarations of my co-counsel Bardis Vakili and Sean Riordan.  
7 Without repeating their detailed and accurate recounting of the negotiations, I can  
8 confirm three important points.

9           a.     First, all negotiations in this case were conducted at arm's  
10 length, often with the magistrate judge's involvement, by diligent counsel zealously  
11 representing their clients' interests—for Class Counsel, the Class's interests—and  
12 making sophisticated professional judgments about the risks and benefits of  
13 agreeing to every substantive term in the Settlement Agreement.

14           b.     Second, the parties reached agreement in principle on the vast  
15 majority of all settlement terms before negotiating any amount of fees and costs to  
16 be paid to Class Counsel, again with the magistrate judge's involvement.

17           c.     Third, in negotiating the substantive terms of the Settlement  
18 Agreement, Class Counsel did not take any position or agree to any concession on  
19 the merits of any issue affecting the Class or otherwise in exchange for or in  
20 anticipation of any financial benefit to Class Counsel.

21           5.     During my 20-year legal career, and especially in the previous 8 years  
22 as legal director for ACLU SDIC, I have gained substantial expertise in civil rights  
23 and constitutional law, federal government litigation, and complex civil procedure,  
24 discovery, and class action issues, all of which were essential to litigating and  
25 negotiating this case.

26           6.     For example, I was co-counsel in three immigrants' rights class actions  
27 against the federal government: *Tartakovsky v. Pierre*, No. 07-cv-1667 BEN (CAB)  
28 (S.D. Cal.); *Kiniti v. Myers*, No. 05-cv- 1013 DMS (PCL) (S.D.Cal.); and *Woods v.*

1 *Myers*, No. 07-cv-1078 DMS (PCL) (S.D. Cal.), both of which presented  
2 significant and complex substantive and procedural issues.

3 7. *Tartakovsky* was a challenge to systematic delays in approving  
4 naturalization applications due to the allegedly unlawful use of FBI name checks as  
5 part of the background screening process after plaintiffs had already passed the  
6 criminal background check required by federal regulations. The government  
7 attempted to moot the case by allowing the named plaintiffs to be naturalized, in  
8 effect picking off the plaintiffs before class certification. I participated in litigating  
9 the questions whether (a) the court's order granting a motion to dismiss the  
10 complaint without entering separate judgment was final and precluded the plaintiffs  
11 from filing an amended complaint with new class plaintiffs; (b) administrative  
12 closure of the case precluded amendment; (c) the case was moot because the  
13 plaintiffs were naturalized before class certification; (d) the government was  
14 deliberately attempting to moot individual claims to avoid review of the merits; and  
15 (e) plaintiffs were prevailing parties entitled to attorneys' fees.

16 8. *Kiniti* involved a challenge to unconstitutional conditions of  
17 confinement resulting in overcrowding at the San Diego Correctional Facility  
18 (SDCF), operated by Correctional Corporation of America under contract to United  
19 States Immigration and Customs Enforcement. In addition to the underlying factual  
20 investigation and drafting of the complaint, I participated in successfully (a)  
21 opposing a motion to dismiss; (b) moving for class certification; (c) negotiating a  
22 settlement agreement; and (d) obtaining approval of the settlement agreement in the  
23 unusual circumstance where class representatives objected to the settlement.

24 15. *Myers* involved a challenge to unconstitutional denial of medical care  
25 to immigration detainees at SDCF. As with *Kiniti*, I participated in the  
26 investigation and drafting of the complaint and successful opposition to a motion to  
27 dismiss. After the district court denied our motion for class certification, I  
28 participated in an interlocutory petition for appellate review of that issue, which the

1 Ninth Circuit granted. I then participated in briefing the class certification issue.  
2 Shortly after oral argument, the panel referred the case to the Ninth Circuit  
3 mediation program. I participated in intensive mediation sessions and other  
4 negotiations that resulted in a detailed and complex settlement agreement, as well  
5 as the motion to certify a settlement class and approve the settlement, which the  
6 district court granted.

7 16. In a significant case I litigated in this Court, which resulted in  
8 preliminary and permanent injunctions against the government's abuse of RICO  
9 forfeiture powers to violate the First Amendment rights of persons not charged with  
10 any crime, Judge Carter awarded market rate fees under the Equal Access to Justice  
11 Act and found that a reasonable rate in this district for my work was \$600 per hour  
12 as of 2011. *Rivera v. Carter*, No. CV 09-2435 DOC (JCx), Order Granting  
13 Plaintiff's Motion for Attorneys Fees (Dkt. 113) at 13 (C.D. Cal. Feb. 28, 2012).

14 17. At ACLU SDIC, attorneys track their hours through contemporaneous  
15 timekeeping. In general, we use the case management program Time Matters to  
16 keep, maintain, and produce contemporaneous time records of work performed on  
17 our cases. At certain times, however, Time Matters was not available for use in this  
18 case for technical or other reasons. Attorneys working on the case have created  
19 spreadsheets to track time not kept in Time Matters. Thus, the combination of  
20 records from Time Matters and those in the attorneys' spreadsheets represent an  
21 accurate accounting of the time attorneys in this office have tracked for work  
22 performed on this case.

23 18. In preparing fee applications, we review our records carefully in order  
24 to ensure that we are not seeking compensation for excessive or unduly duplicative  
25 hours and to exercise appropriate billing judgment in the time for which seek  
26 compensation. For example, as Judge Carter found in awarding fees for my time,  
27 "the hours are reasonable" in large part because "[c]ounsel have reviewed the  
28 records to exercise billing judgment, excluding hours when appropriate." *Rivera*,

1 Order Granting Plaintiff's Motion for Attorneys Fees at 11.

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

3 Executed this 16th day of December, 2014, at San Diego, California.

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DAVID LOY

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*[Additional Counsel]*

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