UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TAMARA G. NELSON and TIMOTHEA RICHARDSON, individually and on behalf of all other persons similarly situated, Plaintiffs, v. BELINDA C. CONSTANT, et al., Defendants.	Case No. 17-cv-14581-JVM Division 1: Magistrate van Meerveld (Class Action)

PLAINTIFF CLASS MOTION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES UNDER 42 U.S.C. §1988, FED. R. CIV. P. 54(D), AND 23(h)

Plaintiff Timothea Richardson and the Plaintiff Class she represents ("Plaintiffs") respectfully move this Court to award reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d), and Fed. R. Civ. P. 23(h). The total amount of attorneys' fees sought by Plaintiffs is $143,665; the total amount of costs and expenses sought by Plaintiffs is $10,089. The facts and law supporting this motion are set forth in the accompanying Memorandum.

Plaintiffs submits the following documents in support of the Motion:

Exhibit 1: Declaration of Eric Foley

Exhibit 1.a Itemized hours of Eric Foley

Exhibit 1.b Itemized hours of M. Rose Falvey

Exhibit 2: Declaration of James W. Craig

Exhibit 2.a Itemized hours of James W. Craig

Exhibit 2.b Summary of Costs and Expenses

Exhibit 2.c Documentation of Costs and Expenses

Plaintiffs intend to seek leave of court to supplement this petition with additional declarations in the coming week.

WHEREFORE, Plaintiffs request that this Court issue its Order granting Plaintiffs an award of attorneys' fees in the amount of $143,665 and costs in the amount of $10,089.

Respectfully submitted,

/s/ Eric A. Foley
ERIC A. FOLEY, La. Bar No. 34199, T.A.
JAMES W. CRAIG, La. Bar No. 33687
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
(504) 620-2259 (p)
(504) 208-3133 (f)
eric.foley@macarthurjustice.org
jim.craig@macarthurjustice.org

Counsel for Plaintiff Class and Timothea Richardson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TAMARA G. NELSON and TIMOTHEA RICHARDSON, individually and on behalf of all other persons similarly situated, Plaintiffs, v. BELINDA C. CONSTANT, et al., Defendants.	Case No. 17-cv-14581-JVM Division 1: Magistrate van Meerveld (Class Action)

PLAINTIFF CLASS MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiff Timothea Richardson and the Plaintiff Class she represents ("Plaintiffs") respectfully move this Court to award reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d), and Fed. R. Civ. P. 23(h). This petition seeks fees for attorney time spent on litigating Count II of the Amended Complaint. In the course of guiding that claim to successful resolution, Plaintiffs incurred significant time and costs for which they now seek compensation.

I. Procedural History

In December 2017, Plaintiffs Tamara Nelson and Timothea Richardson filed their initial Complaint against the Mayor of Gretna, two Magistrates of the Mayor's Court, the Gretna City Prosecutor, Gretna Chief of Police, Clerk of Gretna Mayor's Court, and the City of Gretna. (ECF No. 1.) Plaintiffs later amended the Complaint, alleging two causes of action:

- Count I: the operation of the Gretna Mayor's Court created a financial conflict of interest violating due process rights of members of putative Class A; and

- Count II: the operation of Gretna's Deferred Prosecution Program violated due process and equal protection rights of member of putative Class B.

(ECF No. 41.)

In May 2018, Plaintiffs defended against an attack on their efforts to investigate and identify potential class members. (ECF Nos. 29; 32; 35.) Following oral argument on that motion and on Plaintiffs' motion to certify a class action, the Court ordered supplemental briefing on multiple issues, including standing, *Younger* abstention, necessity of sub-classes, and whether a class for Count II could meet the numerosity requirement. (ECF No. 47.) Plaintiffs filed both a supplemental brief and a reply in response to the Court's order. (ECF Nos. 51; 59.) In September 2018, the Court denied Plaintiffs' class-certification motion without prejudice, pending completion of additional discovery and pursuit of "an amicable resolution." (ECF No. 60)

On October 10, 2018, the parties first met to discuss settlement. As reflected in their status report to the Court (ECF No. 65), the parties agreed that only Count II could be settled. Plaintiffs submitted their first written settlement proposal to Defendants on Oct. 23, 2018, and negotiations continued through to the filing of the *Motion for Preliminary Approval of Proposed Settlement* and its revisions (ECF Nos. 143; 148; 153). In that time, the parties negotiated in multiple face-to-face meetings, phone calls, and written communications.

In the meantime, additional discovery related to the Deferred Prosecution Program was necessary to satisfy counsels' due diligence ethical obligations prior to settling Count II claims. (ECF Nos. 64 at 1; 65.) Plaintiffs propounded written discovery and deposed multiple parties and witnesses on subjects relevant to Count II of the Complaint.

Along with conducting this discovery, as negotiations continued, the Plaintiffs needed to

continue work to meet the Court's deadlines for dispositive motions and trial preparation. (See, e.g., ECF No. 75.) In March 2019, Defendants moved for summary judgment on both Counts I and II. (ECF Nos. 77; 79.) In April 2019, Plaintiffs opposed these motions for summary judgment detailing the wealth-based discrimination at work in the City of Gretna's operation of the Deferred Prosecution Program, including the magistrates' authority to offer community service, the City prosecutor's final policymaking authority over the program, and the Chief of Police and Clerk of Court's assertion of immunity for their roles in the Deferred Prosecution Program. (ECF Nos. 85; 86.) Plaintiffs separately conceded the dismissal of the Chief of Police and Clerk of Court on other grounds (ECF No. 87.)

Prior to the Court's ruling on these matters, the parties consented to proceed before Magistrate Judge van Meerveld. In May 2019, the Court dismissed the Chief of Police and Clerk of Court, but both Counts I and II remained pending for all other Defendants. (ECF No. 106.) The Chief and the Clerk ultimately rejoined the case on a motion to intervene for purposes of settlement of Count II. (ECF No. 139.) The Court issued an amended scheduling order setting a new dispositive motion date for January 7, 2020, pre-trial order due on March 1, 2020, and trial date on March 23, 2020. (ECF No. 107.)

In February 2020, the Court denied Plaintiffs' motion for partial summary judgment and granted remaining Defendants' motion for summary judgment on Count I alleging a financial conflict of interest in the Mayor's Court. (ECF No. 131.) A trial date for March 23, 2020 remained on the calendar, with all associated deadlines for Count II. (ECF No. 107.) Although negotiations for settlement of Count II had continued for over a year, the claim remained unresolved. In the interest of preventing prejudice to Plaintiffs' rights, Plaintiffs' counsel continued trial preparations for a March 23, 2020 trial including preparation of a pre-trial order,

planning witnesses and exhibits. (ECF No. 107); See Ex. 1(a), Eric Foley itemization of time at 12. On February 28, 2020, the Court continued the pre-trial conference and trial without date in anticipation of settlement. (ECF No. 132.)

Plaintiffs filed a motion seeking preliminary approval of settlement from the Court and re-filed a motion to certify settlement class in May 2020. (ECF Nos. 142; 143.) Since May 2020, Plaintiffs have worked with Defendants and the Court to perfect and clarify settlement-class definitions and notice, and to ensure putative class members will have adequate opportunity to be heard regarding any potential objections despite the logistical complications posed by the ongoing COVID-19 pandemic.

Plaintiffs' current motion for fees contemplates only fees incurred in the course of preparing Count II for trial and negotiating and seeking approval of the settlement of Count II. However, additional fees may accrue in the course of seeking final entry of the settlement and should any enforcement actions be necessary to ensure Defendants' adherence to the settlement agreement.

II. Legal Standard

a. Fees in Civil Rights Actions

The purpose of 42 U.S.C. § 1988 is "to ensure effective access to the judicial process for persons with civil rights grievances."[1] Fee recovery is of particular import in civil rights cases, where the plaintiffs are not acting for themselves alone, "but also as a 'private attorney general' vindicating a policy that Congress considered of the highest importance."[2] The Supreme Court has recognized the significance of the fee award to ensure that violators of civil rights, not the

[1] Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (internal quotations omitted).
[2] City of Riverside v. Rivera, 477 U.S. 561, 575 (1986) (internal quotations omitted).

victims of civil rights violations, are forced to bear the expense of the violations and their attendant harms.[3] It is within the context of this purpose that the amount of the fees and costs to be awarded is to be set at the discretion of the district court, based upon the facts and circumstances of each case.[4]

Accordingly, absent special circumstances, the prevailing party in a civil rights action is entitled to reasonable attorneys' fees under 42 U.S.C. § 1988. A plaintiff prevails "when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff."[5] A party has prevailed when the plaintiff obtains a "judgment for damages in any amount, whether compensatory or nominal, [which] modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay."[6] The Fifth Circuit has noted that "the Supreme Court has emphasized that, 'the prevailing party inquiry does not turn on the magnitude of the relief obtained.'"[7] Indeed, a monetary or damages award or settlement is not necessary for a plaintiff to be considered a prevailing party.[8] A plaintiff may prevail through settlement.[9]

The Fifth Circuit has recognized that once a party is determined to be a prevailing party, "judicial gloss on § 1988, and its legislative history, have constrained [the Court's] discretion, in

---

[3] See, e.g., Martin v. Franklin Capital Corp., 546 U.S. 132, 137 (2005).
[4] Hensley, 461 U.S. at 429.
[5] Lefemine v. Wideman, 568 U.S. 1, 1 (2012) (quoting Farrar v. Hobby, 506 U.S. 103, 111–12 (1992)); see also Dearmore v. City of Garland, 519 F.3d 517, 521 (5th Cir. 2008); Watkins v. Fordice, 7 F.3d 453, 456 (5th Cir. 1993).
[6] Farrar, 506 U.S. at 112–13 (1992); Gros v. New Orleans City, CIV.A. 12-2322, 2014 WL 2506464, at *3 (E.D. La. June 3, 2014), on reconsideration in part, CIV.A. 12-2322, 2014 WL 3894371 (E.D. La. Aug. 8, 2014).
[7] Sanchez v. City of Austin, 774 F.3d 873, 879 (5th Cir. 2014) (quoting Farrar, 506 U.S. at 114.)
[8] Lefemine v. Wideman, 568 U.S. at 4–5 (awarding fees when plaintiff did not receive nominal damages but did successfully enjoin defendants); Sanchez, 774 F.3d at 879.
[9] Maher v. Gagne, 448 U.S. 122, 129 (1980) (citing S. Rep. No. 94–1011, p. 5 (1976), U.S. Code Cong. & Admin. News 1976, pp. 5908, 5912.); infra n. 27.

most cases converting the statute's 'may' into a 'must.'"[10] The Fifth Circuit has held and re-affirmed that, "absent special circumstances a prevailing party should be awarded section 1988 fees as a matter of course."[11] Further, the Fifth Circuit "emphasized that 'because Congress believed that the incentive of attorney's fees was critical to the enforcement of the civil rights laws, section 1988 requires an extremely strong showing of special circumstances to justify a denial of fees.'"[12]

b. Methods of Determining Fees

Reasonable attorneys' fees and costs are assessed by a two-step procedure that has been well established in the jurisprudence of this Circuit. First, the number of hours reasonably expended in the litigation is multiplied by a reasonable hourly rate for attorneys of comparable experience in the community to arrive at the "lodestar" figure.[13] A full compensatory fee "will encompass all hours reasonably expended on the litigation."[14] Reasonably expended hours may be measured by the litmus test of what could be reasonably billed to a paying client.[15] By that measure, the determination of reasonably expended hours turns on "the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done."[16] As further detailed below, the Plaintiffs proposed number of billable hours is reasonable in the instant case. The lodestar amount is presumptively reasonable and should be

---

[10] Sanchez, 774 F. 3d at 880.
[11] Id. (emphasis in original) (citing Cruz v. Hauck, 762 F. 2d 1230, 1233 (5th Cir. 1985)).
[12] Id. (emphasis in original) (citing Hous. Chronicle Publ'g Co. v. City of League City, Tex., 488 F. 3d 613, 623 (5th Cir. 2007)).
[13] Perdue v. Winn ex rel. Kenny A., 559 U.S. 542, 551, (2010); Hensley, 461 U.S. at 433; La. Power & Light Co. v. Kellstrom, 50 F.3d 319, 323-24 (5th Cir. 1995) (citing Hensley, 461 U.S. at 433–34); Shipes v. Trinity Indus., 987 F.2d 311, 319 (5th Cir. 1993).
[14] Hensley, 461 U.S. at 435.
[15] Id. at 433.
[16] Norman v. Hous. Auth. of Montgomery, 836 F. 2d 1292, 1306 (11th Cir. 1988).

modified only in exceptional cases.[17]

The lodestar may be adjusted based on twelve factors enumerated by the Fifth Circuit in Johnson v. Georgia Highway Express, Inc.:[18] (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.[19] The Court may consider these factors only to the extent that the factor was not already subsumed in the lodestar calculation.[20]

The Supreme Court and Fifth Circuit have not set any "precise rule or formula" for determining an attorney fee award based on the plaintiff's degree of success, providing that the district court "necessarily has discretion in making this equitable judgment."[21] The Supreme Court has rejected the premise that fee awards must be proportionate to the amount of damages a

---

[17] Perdue, 559 U.S. at 552; Watkins, 7 F.3d at 457; La. Power & Light Co., 50 F.3d at 323–24; Hernandez v. U.S. Customs and Border Prot. Agency, 10-cv-04602, 2012 WL 398328 at *13 (E.D. La., Feb. 7, 2012).
[18] 488 F.2d 714, 717–18 (5th Cir. 1974).
[19] Perdue is one in a line of Supreme Court cases that have been interpreted by other circuits to obviate the need for the Johnson factors. See Pa. v. Del. Valley Citizens' Council for Clean Air, 478 U.S. 546, 564–65 (1986) (noting many of the Johnson factors are subsumed in the lodestar analysis, which is presumed reasonable); Blum v. Stenson, 465 U.S. 886, 897 (1984) (emphasizing that post lodestar adjustments should be very rare). In light of these opinions, other Circuits have all but completely abandoned the Johnson factors. See, e.g., Anchondo v. Anderson, Crenshaw & Assoc., LLC, 616 F. 3d 1098, 1103 (10th Cir. 2010) (finding Perdue adopts the lodestar approach as preferable to Johnson analysis); Gray v. Bostic, 625 F. 3d 692, 714 (11th Cir. 2010) (finding Johnson factors are incorporated into lodestar analysis). However, courts in the Fifth Circuit and the Eastern District of Louisiana continue to look to the Johnson factors in the exceptional case when adjustments to the lodestar are necessary to make the fee award reasonable. Parkcrest Builders, LLC v. Hous. Auth. of New Orleans, CV 15-01533, 2017 WL 4682297, at *1 (E.D. La. Oct. 18, 2017) (citing Watkins v. Fordice, 7 F. 3d 453, 457 (5th Cir. 1993)).
[20] Shipes, 987 F.2d at 320.
[21] Hensley, 461 U.S. at 436–37

civil rights plaintiff actually recovers.[22] The plurality reasoned that such a proportionality requirement "would make it difficult, if not impossible, for individuals with meritorious civil rights claims but relatively small potential damages to obtain redress from the courts."[23] The Fifth Circuit has held that while proportionality may be a consideration in awarding fees, there is no requirement for proportionality.[24]

III. Argument

a. Plaintiffs are a Prevailing Party and Entitled to Attorneys' Fees

A prevailing party in a civil rights action is entitled to reasonable attorneys' fees under 42 U.S.C. § 1988. "A plaintiff 'prevails' . . . 'when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.'"[25] A monetary or damages award or settlement is not necessary for a plaintiff to be considered a prevailing party.[26]

> The fact that respondent prevailed through a settlement rather than through litigation does not weaken her claim to fees. Nothing in the language of § 1988 conditions the District Court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiff's rights have been violated.[27]

---

[22] City of Riverside v. Rivera, 477 U.S. 561, 575 (1986).
[23] Id. at 572–73.
[24] Combs v. City of Huntington, Tex., 829 F.3d 388, 396 (5th Cir. 2016) (citing Branch-Hines v. Hebert, 939 F.2d 1311, 1322 (5th Cir.1991); Hernandez v. Hill Country Tel. Co–Op., Inc., 849 F.2d 139, 144 (5th Cir. 1988)); see also West v. Nabors Drilling USA, Inc., 330 F.3d 379, 395 (5th Cir. 2003)).
[25] Lefemine, 568 U.S. at 4 (quoting Farrar, 506 U.S. at 111–12); see also Bailey v. State of Mississippi, 407 F. 3d 684, 687 (5th Cir. 2005); Watkins v. Fordice, 7 F. 3d 453, 456 (5th Cir. 1993).
[26] Lefemine, 568 U.S. at 4–5 (awarding fees when plaintiff did not receive nominal damages but did successfully enjoin defendants); Sanchez, 774 F.3d at 879.
[27] Maher v. Gagne, 448 U.S. 122, 129, 100 S. Ct. 2570, 2575, 65 L. Ed. 2d 653 (1980) (citing S. Rep. No. 94–1011, p. 5 (1976), U.S. Code Cong. & Admin. News 1976, pp. 5908, 5912.); Grisham v. City of Fort Worth, Tex., 837 F.3d 564, 569–70 (5th Cir. 2016) (holding plaintiff was a prevailing party because consent decree was a legal change in relationship even without admission of liability). Salazar v. Maimon, 750 F.3d 514, 520 (5th Cir. 2014) (holding that statutes cannot be interpreted to require judicial determination or merits trial to determine prevailing party status for fee and cost awards absent explicit language from Congress.)

Defendants have agreed to significantly alter the operation of the Deferred Prosecution Program, as outlined in the settlement agreement filed for the Court's approval. This alteration in the Deferred Prosecution Program will directly benefit both members of the plaintiff class who were or would have been unlawfully excluded from participation from the program. Representatives of the plaintiff class will also monitor the program to ensure continued compliance with the terms of the settlement agreement. Should the Defendants violate the terms of the settlement agreement, Plaintiffs will be able to bring an enforcement action rather than having to start from scratch with a new action.[28] These hallmarks of a changed legal relationship between the parties support Plaintiffs' position as a prevailing party as defined by Supreme Court and Fifth Circuit jurisprudence.[29] As such, Plaintiffs should be awarded fees.[30]

b. The Hours Expended Were Necessary for Plaintiffs to Prevail

The Supreme Court has long recognized the difficulty of disaggregating civil rights claims and has provided guidelines for such circumstances:

> Many civil rights cases will present only a single claim. In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.[31]

---

[28] Grisham, 837 F.3d at 569–70 (noting the ability to enforce a consent decree as significant aspect of the change in legal relationship between parties).
[29] See Lefemine, 568 U.S. at 1; Farrar, 506 U.S. at 111–12; Dearmore v. City of Garland, 519 F.3d at 521; Watkins, 7 F.3d at 456; Sanchez, 774 F. 3d at 879–80; Gros v. New Orleans City, CIV.A. 12-2322, 2014 WL 2506464, at *3 (E.D. La. June 3, 2014);
[30] See e.g., Sanchez, 774 F. 3d at 880; Cruz v. Hauck, 762 F. 2d 1230, 1233 (5th Cir. 1985); Hous. Chronicle Publ'g Co. v. City of League City, Tex., 488 F. 3d 613, 623 (5th Cir. 2007).
[31] Hensley, 461 U.S. at 435; see also Williams v. Kaufman Cty., CIV.A. 397CV0875L, 2003 WL 21755913, at *3 (N.D. Tex. July 30, 2003) (finding a party is not entitled to attorney's fees for the prosecution of an unsuccessful claim unless it involves common facts or derives from related legal theories of another claim that is successfully prosecuted).

Plaintiffs have separated out clearly separable time spent on unsuccessful claims. Plaintiffs understand that they only prevailed in Count II, and limit this petition for fees to work necessary to that claim.

Additionally, the lengthy settlement negotiations required Plaintiffs to continue litigation efforts to avoid prejudicing class members' rights. Much of the delay in these settlement negotiations was beyond Plaintiffs' control, as Plaintiffs had to wait for Defendants to respond or approve various proposals to remedy Gretna's discriminatory deferred prosecution program. As described above, Plaintiffs continued with discovery, including depositions, related to Count II. Additionally, Plaintiffs continued preparing for trial on both Count I and Count II claims, while also continuing to engage in settlement discussions and revisions of the settlement agreement with Defendants' counsel.

c. Counsel Has Exercised Appropriate Billing Judgment by Reducing Hours

Counsel has carefully documented the hours spent directly and reasonably incurred in proving an actual violation of the Plaintiff's rights and has made "a good faith effort to exclude . . . hours that are excessive, redundant, or otherwise unnecessary."[32] Further, as described above, counsel has sought to exclude hours spent on unsuccessful claims not related to the successful theory. The exercise of billing judgment is reflected in the declarations and incorporated billing records or timesheets of all attorneys who worked on this case.

Counsel omitted hours related to depositions, drafting, and argument that were only relevant to Plaintiffs' Count I claims.[33]

---

[32] Hensley, 461 U.S. at 434.
[33] Craig Decl., Ex. 2 at 4 ¶ 11; Foley Decl., Ex. 1 at 6 ¶ 18

Additionally, through the long course of this case multiple attorneys and staff members have worked on the case at various points. Plaintiffs do not seek to capture and recover costs for every attorney who has worked on the case, including time on developing early theories of the case or bringing new attorneys up to speed. For example, because of the stage at which Elizabeth Cumming joined the litigation team, the majority of her time was spent on issues related to Count I. While her work necessarily also included some limited time related to Count II in preparations for trial, Plaintiffs are not seeking compensation for this time.[34] Similarly, Plaintiffs are also not seeking compensation for previous staff members who spent time on paralegal tasks throughout the course of the case.[35] In total, the Plaintiffs are not seeking compensation for approximately 380 hours of work by various attorneys and staff members at the MacArthur Justice Center.[36]

Further, Plaintiffs have not sought to recapture all time utilized for small tasks including emails, phone calls, and other times amounting to less than five minutes. Counsel believes that when aggregated, these smaller tasks amount to significant time omitted from this fee request.[37]

Finally, due to the difficulty of separating time spent on Count I from Count II in many tasks prior to Count I's dismissal, Mr. Foley and Mr. Craig have each exercised further billing judgment by reducing their hours prior to the dismissal of Count I by one third.[38]

---

[34] Craig Decl., Ex. 2 at 4 ¶ 12; Foley Decl., Ex. 1 at 5 ¶ 15.
[35] Craig Decl., Ex. 2 at 4 ¶ 12; Foley Decl., Ex. 1 at 4–5 ¶ 12.
[36] Craig Decl., Ex. 2 at 4 ¶ 12.
[37] Craig Decl., Ex. 2 at 4 ¶ 11.
[38] Foley Decl., Ex. 1 at 7 ¶ 19; Craig Decl., Ex. 2 at 4 ¶ 12.

d. Counsel's Hourly Rates Are Reasonable

i. Counsel's hourly rates are reasonable based on experience of counsel.

Plaintiffs seek an hourly rate of $400 per hour for the work Attorney Jim Craig performed on his case. Mr. Craig has over thirty years of experience in complex civil litigation in Federal court, both in private practice from 1985–89 with a small plaintiffs' firm in Jackson, Mississippi, and later from 1995–2010 with the Jackson office of Phelps Dunbar, LLP (where he was a partner from 1999–2010), and with non-profit organizations, the Louisiana Capital Assistance Center (2011–13) and the Roderick and Solange MacArthur Justice Center (2013–present). Mr. Craig has represented plaintiffs in many Federal civil rights cases since his admission to the Mississippi Bar in 1985. In fact, his first trial and first appeal was in a §1983 case, Reeves v. Claiborne Cty. Bd. Of Educ., 828 F.2d 1096 (5th Cir. 1987). In addition to §1983 cases, Mr. Craig has represented parties in complex antitrust, patent, and commercial litigation cases in Federal court; he also has years of experience representing prisoners in death penalty habeas corpus cases in Federal court, including in the United States Supreme Court, Stringer v. Black, 503 U.S. 222 (1992). Mr. Craig is currently the director of the Louisiana office of the MacArthur Justice Center, and as such both represents plaintiffs in §1983 cases, and supervises the work of four other attorneys handling these cases.

Plaintiffs seek an hourly rate of $275 for Eric Foley for his work on the case. Mr. Foley has been a practicing attorney for eleven years. Following a judicial clerkship at the United States District Court for the District of Puerto Rico, Mr. Foley worked in the New Orleans office of Southeast Louisiana Legal Services from 2011–14. He represented clients in evictions in Louisiana trial and appellate courts, administrative hearings before the Housing Authority of New Orleans, and Social Security claims and appeals to the Social Security Administration's Office of Disability Adjudication and Review and the Appeals Council. In 2015, Mr. Foley joined the Louisiana office of the Roderick & Solange MacArthur Justice Center. In the nearly six years since, he has represented

individual plaintiffs and served as class counsel in multiple civil rights cases in the Eastern, Middle, and Western Districts of Louisiana and in the Fifth Circuit.[39] His work encompasses challenges to the constitutionality of pretrial detention systems, funding of state courts, protesters' rights, the rights of mentally ill prisoners, and prosecutorial misconduct.

Plaintiffs seek an hourly rate of $95 for M. Rose Falvey's work on the case. M. Rose Falvey is an Investigative Paralegal with the MacArthur Justice Center. In 2018, M. Rose observed Mayor's Court proceedings in Gretna on six occasions, and wrote internal memos detailing observations about the deferred prosecution program, payment plans for indigent defendants, and the availability of community service. M. Rose attended arraignments and trial dates of the Mayor's Court, with Prosecutor LeBlanc facilitating the deferred prosecution program. M. Rose interviewed potential witnesses and class members regarding the operation of the Deferred Prosecution Program.[40]

ii. Counsel's hourly rates are reasonable when compared to rates charged by other attorneys with similar experience in the New Orleans Area.

The rates of $400 and $275 per hour are consistent with market rates for attorneys involved in litigation in this District.[41] In 2008, an attorney with thirty years of experience in the Eastern District of Louisiana was compensated for her work in a civil rights action at a rate of

---

[39] Foley Decl., Ex. 1 at 2–3 ¶¶ 5–9
[40] Id. at 5 ¶ 13.
[41] See, e.g., Nagle v. Gusman, No. 12-1910, 2014 WL 12719433 (E.D. La. Dec. 17, 2014) (awarding $400 hourly rate to highly experienced civil rights practitioner); Hernandez, 2012 WL 398328, at *16 (awarding $300 for attorney with eight years of experience in the area of litigation and $180 for attorney with two years of experience in the area of litigation); Smith v. Sprint/United Mgmt. Co., 2011cv499, 2011 WL 6371481, at *4 (E.D. La. Dec. 20, 2011) (awarding $240/hour for an associate with 8 years of experience); Constr. S., Inc. v. Jenkins, 11-1201, 2011 WL 3892225 (E.D. La. Sept. 2, 2011) (awarding $200/hour for an associate with four years of experience and $180/hour for an associate with two years of experience); Cavaretta v. Entergy Corp. Companies' Benefits Plus Long Term Disability Plan, 03cv1830, 2005 WL 1038532 at *1, (E.D. La. April 29, 2005) (awarding an attorney with five years' litigation experience an hourly rate of $225 in an ERISA matter).

$350 per hour.[42] In 2018, an eight-year lawyer was compensated at $275 per hour in a § 1988 fees award. [43] In 2012, an attorney in the Eastern District of Louisiana with eight years of experience was awarded an hourly rate of $300.[44] The requested rates are also consistent with rates for attorneys engaged in civil rights practice in the community.[45]

Similarly, the United States Supreme Court has long held in the context of § 1988, "the self-evident proposition that the 'reasonable attorney's fee' provided for by statute should compensate the work of paralegals, as well as that of attorneys."[46] M. Rose Falvey's rate of $95 per hour is consistent with market rates for investigative paralegals with her level of experience and skill in this community.[47]

iii. Counsel's hourly rates are reasonable when considering the delay in recovery of attorneys' fees.

In most cases, attorneys for defendants receive their hourly rate regularly, not after bearing the delay of waiting until a final entry of judgment. In Pennsylvania v. Del. Valley Citizens' Council for Clean Air,[48] the Court acknowledged the real economic impacts on

---

[42] Cazanave v. Foti, Civil Action No. 00-1246, USDC, (E.D. La.);
[43] Bode v. Kenner City, Civil Action No. 17-5483, 2018 WL 4701541 at *6 (E.D. La. October 21, 2018). See also Sanchez v. Pizzati Enters., Inc., No. 17-9116, 2018 WL 3954866, at *4 (E.D. La. Aug. 16, 2018) ($325per hour for 15-year lawyer with specialized experience in labor and employment law); Alfasigma USA, Inc. v. EBM, Civ. A. No. 17-7753, 2018 WL 3869496, at *4 (E.D. La. Aug. 15, 2018) ($325 per hour for 23-year attorney in products liability litigation); M C Bank & Trust Co. v. Suard Barge Serv., Inc., No. 16-14311, 2017 WL 6344021, at *2 (E.D. La. Dec. 12, 2017) ($350 per hour for 17-year attorney with specialized knowledge in area of litigation); Jones v. New Orleans Regional Physician Hospital Organization, Civil Action No. 17-8817, 2019 WL 6770029 at *2 *Dec. 12, 2019) ($355 per hour for a 17-year lawyer, $300 per hour for a 10-year lawyer in a non-1983 case).
[44] Hernandez, 2012 WL 398328, at *16 (awarding $300 for attorney with eight years of experience in the area of litigation and $180 for attorney with two years of experience in the area of litigation).
[45] Ex. 3, Decl. of Ronald K. Lospennato at 2.
[46] Missouri v. Jenkins, 491 U.S. 274, 285 (1989).
[47] See, e.g., CPI Car Group-Nevada, Inc. v. Traffic Jam Events, LLC, No. 11-2873 (E.D. La. June 21, 2013) (Roby, M.J.); Ranger Steel Services, LP v. Orleans Materials & Equip., Co., 10-112, 2010 WL 3488236, at *3 (E.D. La. Aug. 27, 2010) (finding rate of $100/hr. for a paralegal reasonable, where paralegal's years of experience were not described); Stogner v. Sturdivant, 10-125-JJB-CN, 2011 WL 6140670, at *2 (M.D. La. Dec. 9, 2011) (finding rate of $95/hr. for paralegal reasonable for paralegal with undefined number of years of experience).
[48] 483 U.S. 711, 716 (1987).

plaintiff's counsel and their organizations of waiting several years for an award as "their expenses of doing business continue and must be met. In setting fees for prevailing counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value."

Plaintiffs' counsel have investigated and litigated this case for four years, at significant expense to the MacArthur Justice Center, with no compensation. The uncompensated drain on the MacArthur Justice Center's staff and resources indicates that the requested rates are reasonable.

e. Plaintiffs are Entitled to Fees on Fees

The Fifth Circuit recognizes that attorneys may seek fees earned in seeking payment of fees, "it is well settled that fees-on-fees are recoverable under § 1988."[49] Authorizing fees on fees allow attorneys, who are willing to advance the rights of individuals who may not have significant monetary resources or political power, to take these cases. Without the ability to recover fees on fees, such attorneys would be forced to assume the additional risk of diluting any award with protracted and uncompensated litigation over fees, potentially discouraging attorneys from bringing these difficult cases.[50] Attorneys who take complex cases in the interest of enforcing and protecting the civil rights of individuals should be fully compensated for that work, and protected from undue risks as a matter of public policy. Accordingly, counsel have included in their requested fee award time spent compiling the request for attorneys' fees.

---

[49] Volk v. Gonzalez, 262 F.3d 528, 536 (5th Cir. 2001) (citing Cruz v. Hauck, 762 F.2d 1230, 1233 (5th Cir. 1985)). See also Knighton v. Watkins, 616 F.2d 795, 800 (5th Cir.1980); Johnson v. State of Mississippi, 606 F.2d 635, 637–38 (5th Cir.1979).

[50] Johnson v. State of Miss., 606 F.2d 635, 638 (5th Cir. 1979) (citing Prandini v. Nat'l Tea Co., 585 F.2d 47, 53 (3d Cir. 1978)).

For the reasons set forth above, Plaintiffs seek $27,680 for Mr. Craig's fees, $113,080 for Mr. Foley's fees, and $2,905 for M. Rose Falvey's fees, for total fees of $143,665.

f. Plaintiffs Are Entitled to Costs

Federal Rule of Civil Procedure 54(d)(1) provides that the prevailing party may be awarded costs other than attorney's fees.[51] Fifth Circuit and district court jurisprudence has consistently held that a party does not need to prevail on every issue in order to be awarded costs.[52] As detailed above, Plaintiffs who have achieved change of legal relationship through settlement are considered prevailing parties.[53]

Pursuant to 42 USC § 1988(b), prevailing plaintiffs may recover an attorney's "out-of-pocket expenses which would ordinarily be charged to fee paying clients,"[54] along with costs normally taxed pursuant to 28 U.S.C. § 1920.[55] Eastern District of Louisiana jurisprudence has defined taxable costs under § 1920:

> In short, the statute allows the Court to tax, among others, (1) fees for service of subpoenas, (2) fees for trial transcripts necessarily obtained for use in the case, (3) fees for depositions that seemed reasonably necessary at the time of the deposition, (4) fees for witnesses, and (5) fees for photocopies of papers reasonably necessary to pursue the litigation.[56]

---

[51] Fed. R. Civ. P. 54(d)(1).
[52] MCI Commc'ns Servs., Inc. v. Hagan, CV 07-0415, 2010 WL 11549409, at *2 (E.D. La. Feb. 12, 2010) (collecting cases Studiengesellschaft Kohle mbH v. Eastman Kodak Co., 713 F.2d 128, 131 (5th Cir. 1983) ("[a] party need not prevail on all issues to justify an award of costs"); Lumpkins v. Keystone Shipping Co., No. 97-2869, 1998 WL 564249 (E.D. La. Sept. 1, 1998); Choina v. E.I. du Pont de Nemours & Co., No. 89-4571, 1996 WL 200279 (E.D. La. Apr. 24, 1996); Walton v. Autotrol Corp., No. 95-0926, 1998 WL 531881 (N.D. Tex. July 18, 1998)).
[53] Maher v. Gagne, 448 U.S. 122, 129 (1980) (citing S.Rep. No. 94–1011, p. 5 (1976), U.S.Code Cong. & Admin.News 1976, pp. 5908, 5912.); Grisham v. City of Fort Worth, Texas, 837 F.3d 564, 569–70 (5th Cir.2016)(holding plaintiff was a prevailing party because consent decree was a legal change in relationship even without admission of liability). Salazar v. Maimon, 750 F.3d 514, 520 (5th Cir.2014)(holding that statutes cannot be interpreted to require judicial determination or merits trial to determine prevailing party status for fee and cost awards absent explicit language from Congress.)
[54] Lalla v. City of New Orleans, 161 F. Supp.2d 686, 712–13 (E.D. La. 2001) (citing LeBlanc–Sternberg v. Fletcher, 143 F.3d 748, 763 (2d Cir. 1998).
[55] Id. at 712.
[56] Katz v. State Farm Fire & Cas. Co., CIV.A. 06-4155, 2009 WL 3712588, at *1 (E.D. La. Nov. 4, 2009).

The court may only award costs if it determines that the expenses are allowable and that the costs reasonable "both in amount and in necessity to the litigation."[57] Beyond these requirements, the court maintains significant discretion in taxing costs.[58]

Plaintiffs seek costs for deposition transcripts for Mayor Constant, Prosecutor LeBlanc, Clerk Brossette, and Clerk's staff Chiasson and Richoux. These depositions were necessary to prepare for dispositive motions and eventual trial on the merits of Count II, if settlement had failed.

The Fifth Circuit has long recognized

> a number of courts have interpreted § 1920(2), which refers to "fees of the court reporter" and § 1920(4), which refers to fees for exemplification and copies of papers necessarily obtained for use in a case, to authorize taxing the costs of deposition originals and deposition copies.[59]

Depositions are considered necessary for use in the case, "if at the time it was taken, a deposition could reasonably be expected to be used for trial preparation, rather than merely for discovery, it may be included in the costs of the prevailing party.[60]

Although settlement negotiations as to Count II were underway at the time these depositions were taken, the slow pace of settlement negotiations required Plaintiffs to continue work on the case as if it could potentially proceed to trial on both Counts I and II. Indeed, Plaintiffs continued trial preparations for Count II until the Court continued the trial without date on February 28, 2020.

---

[57] Roberson v. Brassell, 29 F. Supp. 2d 346 (S.D. Tex. 1998).
[58] Stearns Airport Equipment Co., Inc. v. FMC Corp., 170 F.3d 518, 536 (5th Cir. 1999).
[59] W. Wind Africa Line, Ltd. v. Corpus Christi Marine Servs. Co., 834 F.2d 1232, 1237–38 (5th Cir.1988) (internal quotations and citations omitted).
[60] Fogleman v. ARAMCO (Arabian Am. Oil Co.), 920 F.2d 278, 285–86 (5th Cir. 1991); see also United States v. Kolesar, 313 F.2d 835 (5th Cir. 1963).

Additionally, Brossette, LeBlanc, and Constant were all defendants in the action at the time their depositions were taken. Plaintiffs anticipated that these depositions would be used for trial preparation. Because these deponents were defendants when they were deposed, Plaintiffs suggest the cost of the transcript of their depositions is taxable in accordance with the standard articulated by the Fogleman Court. Although trial was not ultimately held in this matter, introduction of transcripts into the trial record is not a litmus test for the necessity of obtaining the deposition and transcript, but rather if the transcripts informed Plaintiffs' arguments.[61] These depositions provided information that was essential to Plaintiff's efforts to defeat Defendants' motion for summary judgment, including information regarding availability and administration of community service alternatives for the deferred prosecution program.

Accordingly, Plaintiffs seek costs in the amount of $2,065 for these deposition transcripts.[62] In addition, Plaintiffs seek compensation for fees expended in Public Records requests to the City of Gretna, the filing fee paid to initiate this matter, and the costs of producing a transcript for the motions hearing before Judge Lemelle on June 20, 2018, costs totaling $524.

Plaintiffs seek additional costs of $7,500 for fees of Ideas42, a consulting firm specializing in behavioral science and retained to aid in the design of class notices, signage, and a draft application for the Deferred Prosecution Program, with the goal of increasing accessibility and participation.

Plaintiffs' total costs detailed above are $10,089.

---

[61] Katz v. State Farm Fire & Cas. Co., CIV.A. 06-4155, 2009 WL 3712588, at *2 (E.D. La. Nov. 4, 2009).
[62] Ex. 2(B).

IV. CONCLUSION

Plaintiffs request that they be recognized as a prevailing party and that the significant attorney time and costs associated with bringing this case be compensated. Plaintiffs request that the Court award fees in the amount of $143,665 and taxable costs in the amount of $10,089.

Respectfully submitted,

/s/ Eric A. Foley
ERIC A. FOLEY, La. Bar No. 34199, T.A.
JAMES W. CRAIG, La. Bar No. 33687
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
(504) 620-2259 (p)
(504) 208-3133 (f)
eric.foley@macarthurjustice.org
jim.craig@macarthurjustice.org

Counsel for Plaintiffs Tamara Nelson and Timothea Richardson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TAMARA G. NELSON and TIMOTHEA RICHARDSON, individually and on behalf of all other persons similarly situated, Plaintiffs, v. BELINDA C. CONSTANT, et al., Defendants.	Case No. 17-cv-14581-JVM Division 1: Magistrate van Meerveld (Class Action)

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that the Motion for an Award of Attorneys' Fees, Costs and Expenses filed by Timothea Richardson and the Plaintiff Class she represents ("Plaintiffs") under 42 U.S.C. §1988 and Fed. R. Civ. P. 54(d) and 23(h) in the above captioned case is hereby set for submission before United States Magistrate Judge Janis Van Meerveld on December 2, 2020 at 11 a.m.

Respectfully submitted,

/s/ Eric A. Foley

ERIC A. FOLEY, La. Bar No. 34199, T.A.
JAMES W. CRAIG, La. Bar No. 33687
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
(504) 620-2259 (p)
(504) 208-3133 (f)
eric.foley@macarthurjustice.org
jim.craig@macarthurjustice.org

Counsel for Plaintiff Class and Timothea Richardson