20 Civ. 3389 (AT) (GWG)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DARRYL CHALMERS, DARREN CONNORS, GLENN MENDEZ, JAMES NOVA, and FATIMA Q. ROSEMOND, on behalf of themselves and all others similarly situated, and AFSCME DISTRICT COUNCIL 37 LOCAL 2507, on behalf of its members,

Plaintiffs,

- against -

CITY OF NEW YORK,

Defendant.

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES FOR PAY ADJUSTMENT CLASS

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PRELIMINARY STATEMENT

Defendant, City of New York ("Defendant" or "City"), opposes Gladstein, Reif and Meginniss ("GRM")'s Motion for Attorneys' Fees. ECF Dkt. No. 175. GRM represents the "Pay Adjustment Class" in this case and, as such, only recently intervened in this litigation in February 2024, for the limited purpose of representing the "Pay Adjustment Class." GRM now seeks $109,527.50 in attorney's fees and $1,335.72 in costs, for purportedly performing 259.3 hours of legal work over the course of five months. The amount that GRM seeks in fees is clearly inflated, based upon even a cursory review of the legal invoices tendered by GRM's counsel. As set forth more fully below, GRM's motion for fees warrants a reduction because GRM has billed excessive hours for the work, it unjustifiably overstaffed this case, and its billing records contain vague and duplicative entries.

The Supreme Court has pointedly noted that attorney's fees in cases involving public entities "are paid in effect by…local taxpayers, and because…local governments have limited budgets, money that is used to pay attorney's fees is money that cannot be used for programs that provide vital public services." *Perdue v. Kenny A.*, 559 U.S. 542, 559 (2010). With this cautionary note in mind, and careful scrutiny of the records they have supplied, GRM fails to justify their fee demand. Indeed, it is grossly disproportional to the time and effort purportedly (or at least unnecessarily) spent on this case. While the participation of GRM meaningfully served to protect the interests of the Pay Adjustment Class, the time now claimed by their counsel in doing so cannot be deemed reasonably expended.

Accordingly, the City respectfully asks that the Court impose a 30% reduction of attorney's fees as a result of the excessive hours GRM purportedly devoted to this case, and limit such fees to $76,669.25.

STATEMENT OF FACTS

The Court is respectfully referred to the Declaration of Lora Minicucci, dated September 23, 2024, for a full statement of the relevant facts and exhibits in support of Defendant's opposition to GRM's motion.

ARGUMENT

POINT I

THE REQUESTED ATTORNEYS' FEES ARE EXCESSIVE BECAUSE THEIR BILLING IS INFLATED

GRM's demand is grossly disproportionate to the role played by GRM's counsel, who appeared in this case after the matter was settled in principle, but thereafter apparently spent 259 hours of legal time to negotiate their clients' settlement upwards by approximately two percent of the total settlement amount. Simply stated, GRM is trying squeeze excessive, unearned fees out of the City's taxpayers. As set forth more fully below, in light of this unreasonable demand, Defendant requests an across-the-board reduction of 30% of GRM's fee request of $109,527.50. A reduction is necessary to turn this unreasonable demand into a more reasonable reimbursement. The party seeking reimbursement of attorneys' fees bears the burden of proving both the reasonableness and necessity of hours spent and rates charged. *See N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1139 (2d Cir. 1983).

In determining a reasonable fee award, both the Supreme Court and the Second Circuit have held that "the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—creates a 'presumptively reasonable fee.'" *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany*, 522 F.3d 182, 183 (2d Cir. 2007)); *see also Hensley*, 461 U.S. at 433. Here, GRM has not shown that their purported fees were reasonable or necessary for

only five months of work on a case that previously had reached penultimate settlement; their fees should be reduced accordingly.

In determining the presumptively reasonable fee, the Court must exclude hours that are "excessive, redundant, or otherwise unnecessary" from the fee request. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). The requesting party "must exercise 'billing judgment'; that is, he must act as he would under the ethical and market restraints that constrain a private sector attorney's behavior in billing h[er] own clients." *Lunday v. City of Albany*, 42 F.3d 131, 133 (2d Cir. 1994). GRM's billing records do not reflect the necessary exercise of 'billing judgment' required to support their excessive demand.

The Supreme Court has further noted that, in reviewing a fee application, "trial courts need not, and indeed should not, become green-eyeshade accountants," and "may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011). "'[T]he most critical factor' in a district court's determination of what constitutes reasonable attorney's fees in each case 'is the degree of success obtained' by the plaintiff." *Barfield v. N.Y. City Health & Hosps. Corp.*, 537 F.3d 132, 152 (2d Cir. 2008) (quoting *Farrar*, 506 U.S. at 114). GRM joined this case at a time when the matter was already settled in principle, entirely to ensure the representation of certain party interests for settlement, and no further litigation was necessary or took place.

A. Excessive Hours

GRM claims that their staff spent 259.3 hours over five months working on a case that had virtually concluded, with the other parties having reached a settlement in principle negotiated for, among others, the Pay Adjustment Class next represented by GRM. *See* Minicucci Decl. at ¶ 14. In the face of these claimed hours, GRM's time records demonstrate an alarming lack of "billing judgment" across multiple areas. Indeed, counsel's overbilling in this case is

contrary to the Second Circuit's admonition that "a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively." *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 522 F.3d 182, 190 (2d Cir. 2008); *see also Hensley*, 461 U.S. at 434 ("Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.") (internal quotation marks omitted) (emphasis in original). Here, no 'reasonably, paying client' would ever pay for 259 hours of legal time to achieve a two percent increase on a previously resolved settlement sum. There is no justification for shifting this unreasonable fee demand onto the City's taxpayers.

The absurdity of GRM's billing is exemplified by several patently excessive time entries. For example, they claim counsel spent 8.5 hours drafting a 2-page letter to the Court. *See* "GRM billing records" annexed to the Harris Declaration as Exhibit A, ECF Dkt. 177-1 at 2-5 and Minicucci Decl. ¶ 15. GRM also claims it spent 27.5 hours drafting the 61-paragraph intervenor complaint, the equivalent of 2.2 paragraphs per hour (a typing rate of less than one (1) word per minute) on a case that had already been fully litigated, and effectively settled, with a clearly established procedural history. *See* GRM billing records annexed to the Harris Declaration ECF Dkt. 177-1 and Minicucci Decl. ¶ 18. They also purportedly spent 44.9 hours on the instant motion for fees, or 17% of their total billing. *Id*. ¶ 22. These hours are clearly excessive and should be reduced accordingly.

B. GRM Unjustifiably Overstaffed This Case

Moreover, GRM plainly overstaffed this case, assigning no less than two partners, an associate, and a law student, which resulted in needless duplication of work and retention of unnecessary personnel. Even with a fee reduction, the 'reasonable, paying client' is not expected to pay full freight when the lion's share of the work is performed by the firm's most expensive staff. *See Homeaway.com Inc.*, 523 F.Supp.3d at 592 (reducing fees by an additional 15% where

bulk of litigation was performed by partners and could have been pursed with less-partner-heavy staffing). Given the fact that the litigation was effectively settled before GRM appeared, there were no novel issues or contentious motion practice to justify this level of blatant overstaffing. Overstaffing can result in relatively simple filings being "touched by many hands, resulting in unnecessary billing" and necessitating a reduction. *Robinson v. N.Y.C. Transit Auth.*, 19-cv-1404 (AT)(BCM), 2024 U.S. Dist. LEXIS 148023 (S.D.N.Y August 16, 2024). The two-page letter filed on February 26, 2024, and the 27.5 hours billed to draft the 61-paragraph intervenor complaint are clear examples of this. Upon finding that counsel seeks compensation for excessive hours, "the court has discretion simply to deduct a reasonable percentage of the number of hours claimed, 'as a practical means of trimming fat from a fee application.'" *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (citing *Carey*, 711 F.2d at 1146). Therefore, the Court should reduce GRM's hours to account for the redundant hours billed due to GRM's overstaffing of this case.

C. Vague and Duplicative Time Entries

An across-the-board reduction of counsel's hours is further justified "due to the vague descriptions contained in many of the attorney time records." *Local 32B-32J, SEIU v. Port Auth.*, 180 F.R.D. 251, 253 (S.D.N.Y. 1998). Examples of GRM's vague and duplicative time entries include the following: on February 9, 2024, Associate Max Utzschneider billed for "emails with WMM;" on February 14, 2024, he billed to "review docs;" on February 21, 2024, he billed for "review materials received from other parties and docket." *See* GRM billing records at 3-5. Such duplicative and gratuitous time entries are far too vague to assess the reasonableness of counsel's hours. *See Spalluto v. Trump Int'l Hotel & Tower*, 04-7497, 2008 U.S. Dist. LEXIS 116424, at *19 (S.D.N.Y. Aug. 29, 2008), *report adopted*, 2008 U.S. Dist. LEXIS 77701 (S.D.N.Y. Oct. 2, 2008) (attorney "invoice that provide[s] cursory descriptions, such as 'phone

call(s) with client,' 'prepare correspondence to co-counsel,' 'prepare correspondence to client,' 'conference with client,' and 'prepare letter to court' are too vague").

Moreover, (and only confirming the predilection toward overstaffing) GRM's billing records are rife with attorneys double-billing for the same work. For example:

- on February 15, 2024, Jessica Harris and Walter Meginniss both billed for the same phone call with Damages Class counsel;
- on February 25, 2024 and February 26, 2024, both Jessica Harris and Walter Meginniss spent time reviewing and revising the intervenor's letter to the Court;
- on March 3, 2024, Jessica Harris billed 1.9 hours for [c]alls with WMM re complaint (0.4); review same (1.2); meeting with MU re same (0.3); Walter Meginniss billed 1.3 hours for "[r]]eview and revise draft complaint, email MU revisions; and Max Utzschneider billed 2.7 hours for "[r]eview WMM edits to complaint and update complaint (.5); Talk to JH re: complaint (.2); Research re: class and subclass designations (.4); and Revise complaint (1.6).

GRM billing records at 3.

There is no justification for this inefficient, duplicative billing. As such, this further warrants an across-the-board reduction. *See Kirsch*, 148 F.3d at 173 (affirming "20% reduction for vagueness, inconsistencies, and other deficiencies in the billing records").

CONCLUSION

For the reasons set forth above, GRM's motion for attorneys' fees and costs should be reduced to $76,669.25 by reducing their hours by 30 percent across-the-board.

Dated: New York, New York
September 23, 2024

Respectfully submitted,

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