UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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,

No. 20 Civ. 3389 (AT)

-and-

BRANDEN BOWMAN and
SEBASTIAN STACK,

Plaintiffs-Intervenors,

-versus-

CITY OF NEW YORK,

Defendant.

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS-INTERVENORS' MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS

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PRELIMINARY STATEMENT

Plaintiffs-Intervenors are recently hired Fire Protection Inspectors ("FPIs") who work for the Fire Department of New York ("FDNY"), an agency of Defendant City of New York (the "City"). They intervened in this action on behalf of themselves and a class of FPIs denominated the Pay Adjustment Class, seeking declaratory and injunctive relief and compensatory damages to remedy discrimination in employment on the basis of race in violation of 42 U.S.C. § 1981 enforced under 42 U.S.C. § 1983, Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-1 *et seq*. ("Title VII"), and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101 *et seq*. Dkt. No. 147. Subsequent to Plaintiffs-Intervenors' intervention, the parties reached a stipulated settlement agreement, which the parties filed with the Court on July 12, 2024. Dkt. Nos. 162-167. The stipulated agreement provides that Plaintiffs-Intervenors may move the Court for "an award based on the lodestar value of their work on this case plus reimbursement of expenses reasonably incurred, but not more than $115,000." Dkt. No 162-1 at ¶ V.2. Pursuant to this agreement, Plaintiffs-Intervenors bring this motion requesting that the Court award Plaintiffs-Intervenors $109,527.50 in attorneys' fees and $1,335.72 in reimbursement of costs.

STATEMENT OF FACTS: THE SCOPE OF PLAINTIFFS-INTERVENORS' WORK

In early February 2024, Plaintiffs-Intervenors Sebastian Stack and Branden Bowman retained Gladstein, Reif & Meginniss, LLP ("GRM") to represent them in this action on behalf of themselves and the proposed Pay Adjustment Class. Harris Decl. ¶ 4. Immediately upon being retained, GRM attorneys began to investigate the history of the case, the terms of the initially proposed settlement, and the facts underlying the initially proposed settlement. Harris Decl. ¶ 5. Around the same time, we submitted a letter to the Court explaining GRM's proposal to

intervene on behalf of the Pay Adjustment Class. Dkt. No. 142. Upon receiving the Court's response, GRM began to draft a proposed Intervenor Complaint, which we filed in March 2024 after consulting with counsel for Plaintiffs and Defendant. Dkt. No. 147.

In late February 2024, GRM requested and received detailed financial records from Plaintiffs' counsel regarding the settlement negotiations that had occurred between Plaintiffs and Defendant. Harris Decl. ¶ 7. Around the end of February and early March 2024, GRM attorneys met repeatedly with Plaintiffs' counsel to ask questions about these records, and to request additional records. *Id.* All requested records were provided without objection. *Id.* These records were voluminous and comprehensive, and included the materials prepared by the parties' experts, as well as the payroll and seniority records the parties had used to calculate the terms of the initially proposed settlement. *Id.*

GRM attorneys conducted an independent review and assessment of all of the records provided by Plaintiffs in detail, including the records showing the calculations that the parties had made to determine which Fire Protection Inspectors were similarly situated to which Building Inspectors for pay adjustment purposes, as well as the calculations the parties made to determine the amount of pay adjustment that each classification of Fire Protection Inspectors would receive under the initially proposed settlement. Harris Decl. ¶ 8.

Upon detailed review of the aforementioned records, and after having met repeatedly with Plaintiffs' counsel to ask questions and have those questions answered, we concluded that the methodology used by the parties to calculate the proposed amounts of the pay adjustments to the pay adjustment class was sound. *Id.* We also concluded that the calculations made by the parties to generate the amount of pay adjustment for each classification of Fire Protection Inspectors were accurate. *Id.*

While we agreed that the methodology and calculations underlying the parties' initially proposed settlement were sound and accurate, nevertheless as advocates for the proposed Pay Adjustment Class, we began negotiating with Plaintiffs' counsel and counsel for Defendant regarding certain terms of the proposed settlement. These arms-length settlement negotiations began at the end of March 2024 and continued to early July 2024, and resulted in a revised settlement agreement proposal that secures more than $700,000 in additional pay adjustments for the Pay Adjustment Class. Harris Decl. ¶ 14. The revised settlement agreement proposal also adds substantial additional due process protections for Pay Adjustment Class members to ensure that they are paid what they are owed. *Id.* As the settlement negotiations entered their final stages, GRM attorneys regularly communicated with Plaintiffs' counsel and Defendant's counsel to propose revisions to the initially proposed settlement agreement. *Id.*

Starting around the end of May 2024, GRM attorneys also began working to prepare the settlement papers that were filed on July 12, 2024. Harris Decl. ¶ 15. This work involved extensive discussion with counsel for Plaintiffs and Defendant, extensive and repeated review and revision of settlement documents, and repeated conversations with class representatives Bowman and Stack regarding the terms of the proposed settlement. *Id.*

ARGUMENT

I. Plaintiffs-Intervenors Are Prevailing Parties.

A plaintiff who succeeds in an action brought under 42 U.S.C. § 1983 and Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-1 *et seq*. ("Title VII") is a "prevailing party" and may be awarded attorneys' fees pursuant to 42 U.S.C. § 1988(b) and 42 U.S.C. § 2000e-5(k). The Second Circuit has instructed that 42 U.S.C. § 2000e-5(k) "is to be construed in the same fashion as all other 'prevailing party' fee provisions in federal civil rights laws, and opinions regarding

fees in cases decided under sections 1983 and 1988 therefore are authoritative in the Title VII context." *Lyte v. Sara Lee Corp.*, 950 F.2d 101, 103 (2d Cir. 1991) "While the language of the Title VII fee provision refers to the award as discretionary, a prevailing plaintiff is in fact entitled to fees 'unless special circumstances would render such an award unjust' in light of the congressional goals underlying enforcement of fee awards in civil rights litigation." *Id.* (citing *Hensley v. Eckerhart,* 461 U.S. 424, 433 n. 7 (1983)).

Further, a plaintiff who obtains success as a result of a settlement will be considered a prevailing party if the relief obtained was the same general type as the relief sought in the action. *See Maher v. Gagne*, 448 U.S. 122, 129 (1980) ("[t]he fact that [plaintiff] prevailed through a settlement rather than through litigation does not weaken [plaintiff's] claim to fees"); *Lyte*, 950 F.2d at 104 (finding plaintiff was a prevailing party because he achieved through settlement "some of the benefit" sought in the complaint); *Lazarus v. County of Sullivan*, 269 F. Supp. 2d 419, 421 (S.D.N.Y. 2003) ("[C]onsent decrees do not always contain an admission of liability, [but] they nonetheless effectuate a change in the legal relationship of the parties . . . [and therefore] create the material alteration of the legal relationship of the parties necessary to permit an award of attorney's fees." (internal quotation marks omitted)).

Here, Plaintiffs-Intervenors are prevailing parties because they achieved substantial success on their claims. The terms of the settlement demonstrate this success. Critically, Pay Adjustment Class members will receive every dollar they reasonably could have recovered through litigation within the Pay Adjustment Period that defines membership in the Class. Each Pay Adjustment Class member will receive a monetary award equal to a pay increase for 17.5 months, and the pay increase awarded each member is 100% of the difference between the

average salary of FPIs at that member's level and the pre-2023[1] average salary of BIs of the equivalent level, with no discount for risk or any other factor. Harris Decl. ¶¶ 8-10; Lieder Suppl. Decl., Dkt. No. 164, at ¶ 14. Counsel anticipate that, on average, the Pay Adjustment awards will exceed $5,000. And, since most Pay Adjustment Class members are also members of the Damages Class, this will be on top of the $35,000 Damages Class net awards, making average net awards to Settlement Class members roughly $40,000. Lieder Suppl. Decl. ¶ 16; *see also* Memorandum of Law in Support of Plaintiffs' Revised Motion for Preliminary Approval of Stipulation of Settlement, Dkt. No. 163 at 22.

While the settlement agreement does not provide for permanent injunctive relief due to the ongoing collective bargaining relationship between AFSCME District Council 37 Local 2507 and Defendant City of New York, "the simple fact that the parties' settlement agreement did not include injunctive terms does not require a reduction in either the compensable number of hours or the presumptively reasonable fee." *Grievson v. Rochester Psychiatric Ctr.*, 746 F. Supp. 2d 454, 470 (W.D.N.Y. 2010) (refusing to reduce fee award where settlement provided for monetary but not injunctive relief, where the claims for monetary and injunctive relief were closely related, and where the time attorneys spent in pursuit of injunctive relief was neither excessive nor inappropriate); *Hensley,* 461 U.S. at 435 n. 11 ("a plaintiff who failed to recover

[1] As explained in the Declaration of Jessica Harris, the Building Inspectors are members of a collective bargaining unit represented by a union, and the FPIs are members of a collective bargaining unit represented by a different union. The collective bargaining agreements for each group expired several years ago. The comparison of the two groups' compensation that is the foundation of the Pay Adjustment Class calculations in the 2023 Settlement is predicated on rates of pay that were established under those expired collective bargaining agreements. However, in August of 2023, the Building Inspectors negotiated a successor bargaining agreement that sets new rates for the Building Inspectors ("2023 BI CBA"). The wage increases obtained by the Building Inspectors were retroactive, and the new rates cover the entire Pay Adjustment period. The union representing the FPIs has not yet negotiated a new collective bargaining agreement for this period. The first negotiation session with the City occurred on June 12, 2024. Harris Decl. ¶ 10.

damages but obtained injunctive relief, *or vice versa,* may recover a fee award based on all hours reasonably expended if the relief obtained justified that expenditure of attorney time") (emphasis added).

Courts regularly award fully compensatory fees where a party achieved a "good outcome," irrespective of the dismissal of some of the party's claims. *See Medina v. Buther*, No. 15-cv-1955(LAP), 2019 WL 4370239, at *17 (S.D.N.Y. Sept. 12, 2019) (declining to reduce a fee award where "only one of Plaintiff's claims was successful" because the outcome as a whole was "a good outcome" for the Plaintiff (*citing Tatum v. City of New York*, No. 06-cv-4290 (PGG) (GWG), 2010 WL 334975, at *12 (S.D.N.Y. Jan. 28, 2010))); *Cabrera v. Schafer*, No. 12 Civ. 6323 (ADS) (AKT), 2017 WL 9512409, at *8 (E.D.N.Y. Feb. 17, 2017), *report and recommendation adopted*, 2017 WL 1162183 (E.D.N.Y. Mar. 27, 2017). While in some cases, courts reduce fee awards on the basis of a party's "partial success," such reductions are only appropriate where either the plaintiff failed to achieve "overall success," or the claims on which the plaintiff failed were "distinctly different claims for relief that [were] based on different facts," such that "counsel's work on one [successful] claim [was] unrelated to [their] work on another [unsuccessful] claim." *Hensley*, 461 U.S. at 434–35.

In *Hensley*, the Court explained that

> [m]any 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.
>
> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation . . .. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit . . .. Litigants in

> good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of . . . certain grounds is not a sufficient reason for reducing a fee.

461 U.S. at 435 (emphasis added). Thus, while the Court held that compensation for work on "unrelated claims" on which a plaintiff has not succeeded should not be included in a fee award, the Court made clear that "unrelated claims" are "distinctly different claims for relief that are based on different facts and legal theories" and can be "treated as if they had been raised in separate lawsuits." *Id.* at 434, 435 (emphasis added). The Court contrasted "unrelated claims" with "claims for relief [that] involve a common core of facts or [are] based on related legal theories." *Id*. at 435 (emphasis added).

The Second Circuit elaborated on *Hensley's* analysis of what is an "unrelated claim" in *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 762 (2d Cir. 1998):

> When a plaintiff has achieved substantial success in the litigation but has prevailed on fewer than all of his claims, the most important question in determining a reasonable fee is whether the failed claim was intertwined with the claims on which he succeeded. *See Hensley v. Eckerhart*, 461 U.S. at 433–37. No fees should be awarded for time spent pursuing a failed claim if it was 'unrelated' to the plaintiff's successful claims in the sense that it was 'based on different facts and legal theories.' *Hensley v. Eckerhart*, 461 U.S. at 434–35. On the other hand, if the plaintiff won substantial relief, and all of his claims for relief 'involve[d] a common core of facts' or were 'based on related legal theories,' so that '[m]uch of counsel's time w[as] devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis,' there should be a fee award for all time reasonably expended.

Id.; *see also Turley v. New York City Police Dep't*, No. 93 Civ. 8748 (SAS), 1998 WL 760243, at *2 (S.D.N.Y. Oct. 30, 1998) (characterizing an "unrelated claim" as one that is "severable").

Here, Plaintiff-Intervenors obtained a "good outcome" and "overall success" by securing 100% of the financial damages they could have been awarded at trial during the pay adjustment period. None of the claims raised by Plaintiffs-Intervenors were dismissed, and Plaintiffs-Intervenors' claims for monetary and injunctive relief were based on the same facts and legal theories. Indeed, they were inextricably intertwined. Therefore, in recognition of the time

Plaintiffs-Intervenors reasonably expended on this litigation, the Court should award Plaintiffs-Intervenors a full fee award.

II. Using the Lodestar Method, the Court Should Award Plaintiffs-Intervenors Attorneys' Fees of $109,527.50.

A prevailing party "'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" *Lefemine v. Wideman*, 568 U.S. 1, 4 (2012)(*quoting Hensley* 461 U.S. at 429); *see also Santander Consumer USA, Inc. v. City of Yonkers*, No. 20-cv-4553 (KMK), 2022 WL 4134718, at *3 (S.D.N.Y. Sept. 12, 2022). No such special circumstance is an obstacle to the award of fees in this case.

"[D]istrict courts evaluating a request for attorneys' fees must conduct a lodestar analysis, which calculates reasonable attorneys' fees by multiplying the reasonable hours expended on the action by a reasonable hourly rate, which results in a presumptively reasonable fee." *Ortiz v. City of New York*, 843 F. App'x 355, 357 (2d Cir. 2021) (internal quotation marks omitted). "There is . . . a strong presumption that the lodestar figure represents a reasonable fee." *A.G. v. New York City Dep't of Educ*., No. 20-cv-7577 (LJL), 2021 WL 4896227, at *4 (S.D.N.Y. Oct. 19, 2021); *accord, Keawsri v. Ramen-Ya Inc*., No. 17-cv-2406 (LJL), 2022 WL 3152572, at *4 (S.D.N.Y. Aug. 8, 2022); *K.O. v. New York City Dep't of Educ*., No. 20-cv-10277 (LJL), 2022 WL 1689760, at *11 (S.D.N.Y. May 26, 2022).

A. Reasonable Hourly Rates

Here, Plaintiffs-Intervenors seek the following hourly rates for work performed on this case:

Name	Title	Years of Experience	Hourly Rate
Walter Meginniss	Partner	46	$600
Jessica Harris	Partner	10	$425
Max Utzschneider	Associate	10	$350
Cameron Dichter	Law Clerk	N/A	$125

These rates are justified by Plaintiffs-Intervenors' counsel's skill and experience.

Attorneys

Walter Meginniss practiced law for more than 46 years in the field of civil rights and labor and employment law before the initiation of this case. Harris Decl. ¶ 29. He has represented employees both in individual actions and in class actions. *Id.* The details of his career, prior experience and publications are set out in detail in the accompanying declaration. Harris Decl. ¶¶ 25-31.

Jessica Harris had practiced for 10 years when she began working on this case, and has been a partner at GRM since January 2022. Harris Decl. ¶¶ 21-24. She has extensive experience in civil rights, labor, and employment law, and has handled state and federal court litigation. *Id.* In her litigation in federal court, she has represented clients in class and collective actions including serving as lead counsel in multiple putative class and collective action cases. *Id.* The litigation experience of Ms. Harris is set out in detail in the accompanying declaration. *Id.*

Max Utzschneider had practiced for 10 years when he began working on this case, and has been an associate at GRM since November 2023. Harris Decl. ¶¶ 22-35. Prior to joining GRM, Mr. Utzschneider served as an Assistant General Counsel for Service Employees International Union Local 32BJ where he gained litigation experience in federal court as well as substantial experience in grievance and arbitration proceedings. *Id.* Mr. Utzschneider's experience is set out in detail in the accompanying declaration. *Id.*

Law Clerk

Cameron Dichter began working on this case after joining GRM as a summer law clerk in May 2024. The academic credentials for Mr. Dichter are described in the accompanying declaration.

What is a reasonable hourly rate is determined by reference to prevailing market rates for similar services by attorneys who are of reasonably comparable skill and experience and in the same community. *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998); *Chambless v. Masters, Mates & Pilots Pension Plan*, 885 F.2d 1053, 1058–59 (2d Cir. 1989); *K.O.*, 2022 WL 1689760, at *8 ("The district court must ascertain whether the requested rates are in line with those prevailing in the community" (internal quotation marks omitted)). The calculation of a reasonable hourly rate may take into account, among other factors, the time and labor required by a case, the novelty and difficulty of the questions raised, the level of skill required to perform the legal service properly, the results obtained, the experience, reputation, and ability of the attorneys, and awards in similar cases. *Lilly v. City of New York*, 934 F.3d 222, 230 (2d Cir.2019).

The rates used by the court to calculate the lodestar should be "current rather than historic hourly rates." *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989). Over time, rates awarded to prevailing parties in Title VII cases in this district have continuously trended upwards, and thus, the most recent decision on appropriate rates are the most relevant. *Knox v. John Varvatos Enterprises Inc.*, 520 F. Supp. 3d 331, 341 (S.D.N.Y. 2021); *Loc. 1180, Commc'ns Workers of Am., AFL-CIO v. City of New York,* 392 F. Supp. 3d 361, 380 (S.D.N.Y. 2019); *Lewis v. Am. Sugar Ref., Inc.*, No. 14-CV-02302 (CRK), 2019 WL 116420, at *4 (S.D.N.Y. Jan. 2, 2019) ("Courts in this district have approved hourly rates of $250 to $600 for civil rights attorneys with over ten years of experience and of $200 to $350 for associates.").

Plaintiffs-Intervenors submit that recent decisions show that the rates they seek are fully congruent with prevailing market rates in the Southern District of New York. Plaintiffs-Intervenors propose a rate of $600 per hour for Mr. Meginniss, who has substantial experience in federal litigation on civil rights issues. Indeed, Mr. Meginnis was recently awarded this very rate

in a § 1983 case in the Southern District of New York. *See Barzilay v. City of New York*, No. 1:20-CV-04452 (SDA), 2023 WL 2917304, at *4 (S.D.N.Y. Apr. 12, 2023). The requested rate also falls well within the bounds of what courts in this District have recently found appropriate for a lawyer with Mr. Meginniss's skill and experience. For example, Judge Aaron recently approved a $600 hourly rate for a civil rights attorney with 22 years of experience, whereas Mr. Meginniss has more than twice that amount. *Loc. 1180, Commc'ns Workers of Am., AFL-CIO*, 392 F. Supp. 3d at 380; *see also Gulino v. Bd. of Educ. of City Sch. Dist. of City of New York*, No. 96-cv-8414 (KMW), 2022 WL 16637824 , at *4 (S.D.N.Y. Nov. 2, 2022) (adopting magistrate judge's recommendation approving hourly rates of $650 for partners); *Williams v. Epic Sec. Corp*., 368 F. Supp. 3d 651, 658 (S.D.N.Y. 2019) ($600 per hour rate approved for partner in an employment matter with 32 years of experience); *Rozell v. Ross-Holst*, 576 F. Supp. 2d 527, 546 (S.D.N.Y. 2008) ($600 per hour rate found to be reasonable for a partner); *HomeAway.com, Inc. v. City of New York*, 523 F. Supp. 3d 573, 597 (S.D.N.Y. 2021) (finding reasonable a rate of $650 per hour for a partner in a § 1983 case).

Plaintiffs-Intervenors' requested rate of $425 per hour for Ms. Harris, who is a partner with 10 years of experience, is also squarely within the range of rate approved for attorneys of comparable skill and experience. *See, e.g., Loc. 3621, EMS Officers Union, DC-37, AFSCME, AFL-CIO v. City of New York,* No. 18-CV-4476 (LJL), 2022 WL 832025, at *5 (S.D.N.Y. Mar. 21, 2022) (approving hourly rate of $425 in an employment discrimination matter for "Junior Partner with about 11 years of experience when case began); *De Curtis v. Upward Bound Int'l, Inc.,* No. 09-CV-5378 (RJS), 2015 WL 5254767, at *3 (S.D.N.Y. Aug. 28, 2015) (finding rate of $450 reasonable for attorney in Title VII matter with 2 years of experience as a partner); *Santander Consumer USA, Inc.*, 2022 WL 4134718 at *4 (rate of $500 reasonable for attorney

with 11 years of experience who "regularly represent[s] clients in civil rights litigation under … § 1983").

Plaintiffs-Intervenors' requested rate of $350 for Mr. Utzschneider, who is an associate with 10 years of experience in labor and employment matters, is also consistent with rates approved by the courts in this district. *See, e.g., Loc. 1180, Commc'ns Workers of Am., AFL-CIO*, 392 F. Supp. 3d at 380 ($350 per hour rate approved for attorney with 10 years of experience who was an associate for most of the relevant period); *Gulino* 2022 WL 16637824, at *4 (adopting magistrate judge's recommendation approving hourly rate of $400 for senior associates); *Knox* 520 F. Supp. 3d at 341 (court found $325 per hour rate was reasonable for attorney with 12 years of experience but no experience with class actions or employment litigation); *Rozell*, 576 F. Supp. 2d at 546 ($350 per hour rate approved for senior associates).

Finally, Plaintiffs-Intervenors' requested rate of $125 for law student Cameron Dichter is also consistent with recent court decisions on rates for this work. *See, e.g., as Torres v. City of New York,* No. 18 Civ. 3644, 2020 WL 6561599, at *5 (S.D.N.Y. June 3, 2020), *report and recommendation adopted*, No. 18 Civ. 3644 2020, WL 4883807 (S.D.N.Y. Aug. 20, 2020) ($100 per hour rate approved for law clerks in Title VII case); *Williams*, 368 F. Supp.3d at 659 (finding reasonable $150 per hour rate for law clerk in employment law matter); *Elisama v. Ghzali Gourmet Deli Inc.,* 14-cv-08333 (PGG) (DF), 2016 WL 11523365, at *18 (S.D.N.Y. Nov. 7, 2016) (decision six years ago awarding rate of $120 per hour to "legal clerk" not yet admitted to practice), *report and recommendation adopted*, 2018 WL 4908106 (S.D.N.Y. Oct. 10, 2018); *Ni v. Bat-Yam Food Servs. Inc.*, No. 13-cv-07274 (ALC) (JCF), 2016 WL369681, at *7 (S.D.N.Y. Jan. 27, 2016) ($120 hourly rate for law clerks was reasonable). In sum, Plaintiffs-Intervenors' requested rates for the lawyers and law clerk who worked on this matter are all commensurate

with, and in fact in some instances fall slightly below, rates recently awarded in this District for individuals of comparable skill and experience.

Plaintiffs-Intervenors were not paid by the individual Plaintiffs-Intervenors for their work on the case. They were, however, paid by AFSCME DC 37 Local 2507 ("the Union"). The fees paid by the Union were at rates well below the hourly rates proposed by Plaintiffs-Intervenors in this motion. However, it is well-established that attorneys who charge lower fees in working for nonprofit entities like unions are entitled to a fee award under Title VII and § 1988 that reflects market rates, not the reduced fee structure they charge those nonprofits. *Townsend v. Benjamin Enterprises, Inc.,* 679 F.3d 41, 59 (2d Cir. 2012) (finding in Title VII matter that court did not err in calculating attorneys' fees with prevailing market rates of practitioners with similar skills and experience rather than litigant's retainer rate); *Mendenhall v. National Transp. Safety Bd*., 213 F.3d 464, 471 (9th Cir. 2000) ("[A] reasonable hourly rate is not made by reference to the rates actually charged the prevailing party." (internal quotation marks omitted)); *Heng Chan v. Sung Yue Tung Corp*., No. 03 Civ. 6048 (GEL), 2007 WL 1373118 (S.D.N.Y. May 8, 2007); *M.S. v. New York City Bd. of Educ.*, No. 01 Civ. 10871 (CBM), 2002 WL 31556385, at *5 (S.D.N.Y. Nov. 18, 2002), *aff'd sub nom. A.R. ex rel. R.V. v. New York City Dep't of Educ.,* 407 F.3d 65 (2d Cir. 2005); *Moon v. Gab Kwon,* No. 99 Civ. 11810 (GEL), 2002 WL 31512816 at *2 (S.D.N.Y. Nov. 8, 2002) ("[N]onprofit civil rights attorneys are entitled to fees that are comparable to those awarded to private attorneys with fee-paying clients.").

In short, "[t]he reasonableness of a fee award does not depend on whether the attorney works at a private law firm or a public interest organization." *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 184 n.2 (2d Cir. 2008). The principle is applied equally to attorneys who have below-market fee

arrangements with unions. Thus, when a union's attorneys demonstrate that they charged reduced rates for "public-spirited reasons" related to the union's advocacy, and that given their "years of legal experience as well as … ability to handle complicated federal cases" they could command much higher rates at market value, the court held that was "no basis to award a lower rate." *Serv. Emps. Int'l Union Loc. 32BJ v. Preeminent Protective Servs., Inc.*, 415 F. Supp. 3d 29, 36 (D.D.C. 2019) ("The Court finds ample evidence that the Union's outside counsel are skilled attorneys who could command a higher rate but chose to discount their services for the Union because of its advocacy efforts."), *aff'd*, 997 F.3d 1217 (D.C. Cir. 2021); *see also Covington v. D.C.*, 57 F.3d 1101, 1103 (D.C. Cir. 1995). ("In section 1988 attorneys' fee cases, attorneys who customarily charge reduced fees reflecting … public spirited goals may seek … prevailing market rates if [they] demonstrate[] … that the customarily reduced rates are charged for non-economic reasons … [and] … offer information documenting [their] skill, experience, and reputation."); *Flynn v. Dick Corp*., 624 F. Supp. 2d 125, 130 (D.D.C. 2009) (attorneys "sufficiently demonstrated the public spiritedness of [their] …discounted fees for … representation of [a union Fund]"). Plaintiffs-Intervenors' counsel in this case have provided details about their career-long dedication to representing workers and their organizations, demonstrating their public-spirited reasons for charging the Union rates significantly below-market.

For the foregoing reasons, the hourly rates requested by Plaintiffs-Intervenors here are reasonable, in conformity with the standards of this District, and should be approved.

B. Plaintiffs-Intervenors Are Entitled to a Full Award of Fees for the Hours that Plaintiffs-Intervenors' Counsel Have Reasonably Billed.

Each individual who worked on the case maintained contemporaneous records of the

work they performed on this case. Harris Decl. ¶ 16. Further, the hours of work each individual performed were reasonable and necessary for the successful litigation of the case. The time records show that the individuals who worked on this case expended the following hours on the case (as shown in Exhibit A to the Harris Declaration), totaling 259.3 hours:

Name	**Hours**
Walter Meginniss	79.2
Jessica Harris	59.2
Max Utzschneider	96.6
Cameron Dichter	24.3

Plaintiffs-Intervenors have excluded from these figures and the time records attached as Exhibit A to the Harris Declaration time that was potentially duplicative or excessive. Thus, where there were more than two attorneys present at a meeting, Plaintiffs-Intervenors excluded the time billed by the third attorney. Harris Decl. ¶ 19. Plaintiffs-Intervenors additionally excluded time billed by several attorneys who assisted with the case in only limited capacities. *Id.*

Although in some instances, Plaintiffs-Intervenors request fees for more than one attorney's work on the same document, or for the attendance of more than one attorney at the same meeting, these requests are reasonable and not redundant. *See id*. As courts have recognized, as a practical matter, "division of responsibility" often "make[s] it necessary for more than one attorney to attend [certain] activities," and "[m]ultiple attorneys may be essential for planning strategy, eliciting testimony or evaluating facts or law." *Williamsburg Fair Hous. Comm. v. Ross–Rodney Hous. Corp.*, 599 F. Supp. 509, 518 (S.D.N.Y. 1984). The simultaneous presence of two or three attorneys at meetings is not unreasonable where "each attorney [makes] a distinct contribution by [their] presence or participation." *Id*. "[M]ultiple attorneys may be necessary at critical points in a litigation," and therefore "it is not *per se* unreasonable for a

senior attorney to review a junior attorney's work, or for multiple attorneys to attend an internal or external meeting to collaborate." *United States ex rel. Yasti v. Nagan Constr*., No. 17 CIV. 7163 (AT), 2021 WL 1063437, at *5 (S.D.N.Y. Mar. 18, 2021).

Further, to the extent Plaintiffs-Intervenors request fees for attorneys' conferences with one another or collaboration on drafting filings or other materials in this action, these expenditures of time were consistent with standard attorney practice and were proportional to the complexity of the issues in this action. *Cooper v. Sunshine Recoveries, Inc*., No. 00 Civ. 8898 (LTS) (JCF), 2001 WL 740765 at *4 (S.D.N.Y. June 27, 2001) ("[I]t is common in a complex case for more than one attorney to work on a particular draft"); *Lenihan v. City of New York*, 640 F. Supp. 822, 825-26 (S.D.N.Y. 1986) ("It is normal practice for attorneys to revise briefs several times before submitting them to the Court . . ."; "intra-office conferences among attorneys familiar with and working on particular litigation enhance the possibility of competent and efficient litigation, and hours spent in such conferences are not reduced"). Because Plaintiffs-Intervenors have requested fees only for time reasonably expended by attorneys, they should be awarded the full amount of fees they have requested.

Multiplying the hours expended for which Plaintiffs-Intervenors now request fees by the corresponding hourly rate at which fees are sought yields the following totals:

	Hours	x	Hourly Rate	=	Presumptively Reasonable Fee
Walter Meginniss	79.2	x	$600	=	$47,520
Jessica Harris	59.2	x	$425	=	$25,160
Max Utzschneider	96.6	x	$350	=	$33,810
Cameron Dichter	24.3	x	$125	=	$3,038
				Total	$109,527.50

Accordingly, Plaintiffs-Intervenors respectfully request that the Court find that the fee award Plaintiffs-Intervenors seek is reasonable and award Plaintiffs-Intervenors $109,527.50 in attorney's fees.

III. The Court Should Award Plaintiffs-Intervenors Expenses and Costs in the Amount of $1,335.72

Plaintiffs-Intervenors additionally seek an award of expenses and costs reasonably incurred in litigating this case. An award of fees under a fee-shifting statute includes reasonable out-of-pocket expenses incurred by counsel which are ordinarily charged to clients. *LeBlanc-Sternberg*, 143 F.3d at 76; *Burns v. Scott*, No. 20-CV-10518 (JGK), 2022 WL 10118491 (S.D.N.Y. Oct. 17, 2022); *Greene v. City of New York*, No. 12-cv-6427 (SAS), 2013 WL 5797121, at *6 (S.D.N.Y. Oct. 25, 2013). The out-of-pocket expenses and costs incurred in the performance of legal services on Plaintiffs-Intervenors' behalf, total $1,335.72. *See* Exs. B & C to Harris Decl.

CONCLUSION

For the foregoing reasons, Plaintiffs-Intervenors' motion for attorney's fees and costs should be granted, and Plaintiffs-Intervenors should be awarded attorney's fees in the amount of $109,527.50 and costs and expenses in the amount of $1,335.72.

Dated: July 26, 2024

Respectfully submitted,

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