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

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PRELIMINARY STATEMENT

In the revised settlement the parties filed with the Court for preliminary approval, the parties agreed that Plaintiffs-Intervenors, through their counsel Gladstein, Reif & Meginniss, LLP ("GRM"), would seek attorneys' fees and costs not to exceed $115,000. *See* ECF Dkt. No. 168-1 ("Revised Settlement"). On July 26, 2024, Plaintiffs-Intervenors filed a motion seeking $109,527.50 in attorneys' fees and $1,335.72 in costs and expenses. *See* ECF Dkt. No. 176 ("PI's MOL").

Defendant filed an opposition to Plaintiffs-Intervenors' fee application. *See* ECF Dkt. No. 192 ("Def.'s Opp'n"). Therein, Defendant does not contest that Plaintiffs-Intervenors are prevailing parties entitled to an award of fees and costs under 42 U.S.C. § 1983 and Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-1 *et seq*., nor does Defendant contest the hourly rates sought by Plaintiffs-Intervenors. Instead, on the basis of a handful of cherry-picked billing entries, Defendant argues that the Court should reduce Plaintiffs-Intervenors' attorneys' fees by a whopping 30% because Plaintiffs-Intervenors allegedly billed excessive hours, overstaffed the case, and made vague and duplicative time entries. For the reasons explained below, the Court should reject Defendant's arguments and grant Plaintiff's motion for fees and costs in its entirety.

ARGUMENT

1. Plaintiffs-Intervenors did not bill excessive hours.

Defendant alleges that "the litigation was effectively settled before GRM appeared," Def.'s Opp'n at 6[1], and that GRM billed excessive hours for a case "that had virtually concluded, with the other parties having reached a settlement in principle," *id.* at 4. This grossly mischaracterizes the context of GRM's involvement, its role in this case, and the success it

[1] Page numbers cited herein refer to the page numbers of the brief, not the ECF page numbering.

achieved. The "settlement in principle" referenced by Defendant was *rejected* by this Court out of concern that the Pay Adjustment class was not adequately represented. *See* ECF Dkt. No. 137. Plaintiffs-Intervenors did not intervene to rubber-stamp that same settlement on behalf of the Pay Adjustment class, but rather to zealously and independently advocate for the interests of that class per the Court's instruction. GRM's billing reflects the due diligence performed by GRM in the course of that representation, which involved independent review of hundreds of pages of docket entries, expert materials, and settlement documents, multiple submissions to the Court, and extensive settlement negotiations through which GRM secured a substantially better settlement for the Pay Adjustment class.

Through GRM's efforts, in the Revised Settlement, as compared to the initial settlement, the pay adjustment period will be extended 5.5 months, and $707,500 will be added to the total settlement sum, all of which will be paid to the Pay Adjustment class members if the settlement is approved. All told, GRM's efforts will secure an increase in compensation for Pay Adjustment class members from an estimated $1,430,000 in the initial settlement, *see* ECF Dkt. No. 120 at 8, to an estimated $2,137,500 in the Revised Settlement. This is a 66% increase in compensation to Pay Adjustment class members (the only class represented by GRM). In addition, GRM's efforts secured vital due process protections in the Revised Settlement to ensure that Pay Adjustment class members are accurately compensated for time worked. *See* Revised Settlement at ¶ IV.10-IV-18.

Finally, GRM secured an agreement in the revised settlement that its attorneys' fees and costs would not be paid out of the settlement fund, ensuring that 100% of the additional compensation GRM secured for Pay Adjustment class members would go to those workers. *See* Revised Settlement at ¶ V.2. In this context, GRM's application for fees and expenses is

eminently reasonable. Significantly, GRM's fees and costs equate to only about 16% of the additional compensation GRM's efforts secured for Pay Adjustment class members.

Defendant claims that the hours Plaintiffs-Intervenors spent drafting the letter motion to intervene, the Intervenor Complaint, and this fee application are not merely excessive, but "absurd," *see* Def.'s Opp'n at 5, but Defendant cites no basis for this bare assertion. Contrary to Defendant's contention, Plaintiffs-Intervenors' billing is not "absurd," but rather reflects a concerted effort to zealously represent the Pay Adjustment class while avoiding unnecessary litigation and associated expenses. For example, Plaintiffs-Intervenors first notified the Court of our proposed involvement in the case in a two-page letter, *see* ECF Dkt. No. 142, as opposed to a lengthy motion to intervene. The letter was a proposal on how we intended to proceed with intervention and prompt processing of the case. Though Defendant misleadingly claims that "counsel spent 8.5 hours drafting a 2-page letter to the Court," Def.'s Opp'n at 5, in fact, GRM's billing records show that much of that time consisted of internal discussions about what tasks we would have to do and how quickly we could accomplish those tasks; discussions with Plaintiffs' counsel and Defendant's counsel in order to ensure that the other parties would not object to our proposed plan; sharing a draft of the letter with counsel for those parties before we filed; and making revisions to the letter at the suggestion of other counsel, *see* Ex. A to Harris Decl. [ECF Dkt. No. 177-1] at 2-3. By proceeding in this manner, far from excessively billing, Plaintiffs-Intervenors preserved judicial economy and lowered litigation costs.

Plaintiffs-Intervenors then spent only 27.5 hours drafting the Intervenor Complaint, an effort that involved review of over one hundred docket entries, hundreds of pages of expert reports and settlement documents, an independent review of relevant case law, and multiple drafts. Counsel for Defendant states that the case "had been comprehensively litigated with a

clearly established procedural history," *see* Minicucci Decl. [ECF Dkt. No. 193] at 18, but it was the obligation of Plaintiffs-Intervenors to independently review that litigation and procedural history and underlying case law to protect the interests of the Pay Adjustment class. Moreover, the Intervenor Complaint was the first pleading in this case to plead claims on behalf of the Pay Adjustment class, which required Plaintiffs-Intervenors to consider which claims to assert and how best to assert them in light of the litigation history of the case.[2] In this context, the hours spent drafting the Intervenor Complaint were plainly not excessive.

Next, Defendant claims that the 44.9 hours Plaintiffs-Intervenors spent on this fee motion is excessive, but courts in this district have previously found that a similar time expenditure in preparing a comparably-sized fee application is not excessive. *See Rahman v. The Smith & Wollensky Rest. Grp., Inc.*, No. 06 CIV.6198 (LAK) (JCF), 2009 WL 72441, at *7 (S.D.N.Y. Jan. 7, 2009) (finding 41.2 hours preparing fee application not excessive). Moreover, 24.3 of the hours billed for the fee application were for work performed by GRM's law student, Cameron Dichter, at a low $125 hourly rate. This low rate reflects the understanding that law students may take longer to perform certain tasks compared to more senior attorneys, and the Eastern District of New York has ruled a similar time expenditure by a law student intern on a fee application is not unreasonable. *Li Rong Gao v. Perfect Team Corp.*, No. 10-CV-1637 (ENV) (CLP), 2017 WL 9481011, at *15 (E.D.N.Y. Jan. 11, 2017), *report and recommendation adopted* , 2017 WL 1857234 (E.D.N.Y. May 8, 2017), *aff'd sub nom. Xiao Hong Zheng v. Perfect Team Corp.*, 739 F. App'x 658 (2d Cir. 2018) (awarding compensation for 20.5 hours of work performed by law student intern in relation to fee application).

[2] If, as Defendant's Opposition seems to imply, the Intervenor Complaint raised no issues that had not already been "comprehensively litigated," then on what legal basis did Defendant respond to the Intervenor Complaint not with an answer, but with a pre-motion letter alleging that the Intervenor Complaint should be dismissed?

Moreover, Plaintiffs-Intervenors have already trimmed their fee application to ensure that it does not include any duplicative or excessive time entries. For example, when there were more than two attorneys present at a meeting, Plaintiffs-Intervenors excluded from their fee application the time billed by the third attorney. *See* PI's MOL at 15. Further, Plaintiffs-Intervenors excluded time billed in the case by attorneys who assisted in only a limited capacity. *Id.* And, Plaintiffs-Intervenors agreed to – and did – limit their fee application to less than $115,000, even though the result of the agreement is that Plaintiffs-Intervenors will not be compensated for all of their time (including, for example, time spent reviewing and replying to Defendant's opposition to Plaintiffs-Intervenors' motion for fees).

2. Plaintiffs-Intervenors did not overstaff this case.

In their fee application, Plaintiffs-Intervenors explain in detail the case law supporting GRM's use of multiple attorneys working as a team to handle a complex case such as this. *See* PI's MOL at 15. Defendant's Opposition simply ignores these decisions and asserts without elaboration or support that GRM overstaffed the case. Defendant's assertions on this point are fully addressed in Plaintiffs-Intervenors' initial memorandum in support of their fee application. It bears emphasizing, however, that GRM is a small civil rights, labor, and employment law firm composed at all relevant times of nine partners and two associates. Plaintiffs-Intervenors' use of two partners and one associate in this case is neither unusual nor excessive for a small firm litigating a complex civil rights action of this sort. As the court noted in *In re Vitamin C Antitrust Litig.*, No. 05-CV-453, 2013 WL 6858853 (E.D.N.Y. Dec. 30, 2013),

> Defendants contend that high-rate partners did too much work instead of downstreaming it to lower-rate associates. The argument bucks a trend among many clients which have come to believe that although a junior lawyer may have lower rates, that junior lawyer's inexperience will cause the lawyer to spend far more time generating a work product than the experienced partner. . . . It is also well known that plaintiffs' law firms frequently follow a different model than

> large mega-firms in terms of the allocation of work between partners and associates, placing much more responsibility at higher levels. I see no general infirmity in using this model.

Id. at *5.

While in some instances, Plaintiffs-Intervenors request fees for more than one attorney's work on the same document, and for the attendance of more than one attorney at the same meeting, courts have recognized that, as a practical matter, "division of responsibility may make it necessary for more than one attorney to attend activities such as depositions and hearings. Multiple 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 proper management of litigation often requires such collaboration and courts have consistently found it reasonable to have two senior attorneys present at client meetings that constitute "critical points in the litigation." *See, e.g., New York State Ass'n for Retarded Child., Inc. v. Carey,* 711 F.2d 1136, 1146 (2d Cir. 1983). To the extent that 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"). As Plaintiffs-Intervenors have requested fees only for time

reasonably expended by attorneys and, where multiple attorneys collaborated, such time was not redundant, Plaintiffs-Intervenors should be awarded the full amount of fees they have requested.

The cases cited by Defendant do not support its claim that Plaintiffs-Intervenors overstaffed this case. Defendant cites *Robinson v. New York City Transit Auth.*, No. 19-CV-1404 (AT) (BCM), 2024 WL 4150818, at *13 (S.D.N.Y. Aug. 16, 2024) for the proposition that filings "touched by many hands" may result in unnecessary billing, but *Robinson* involved attorneys for two nonprofits and two law firms all drafting and editing the same filings, which caused, for example, a single discovery letter-motion to be "touched" by seven attorneys. *Id.* at *13 n.5. By comparison, Plaintiffs-Intervenors' use of two partners, an associate, and a law student to handle this complex class action litigation is perfectly reasonable. *See, e.g., Wise v. Kelly*, 620 F. Supp. 2d 435, 453 (S.D.N.Y. 2008) ("In light of the complexity of this class action lawsuit and that, for the most part, Plaintiff has utilized a small team of three lawyers to litigate this matter, the Court does not view the hours Plaintiffs' lawyers have spent together in internal conferences as excessive.").

Similarly, Defendant misconstrues *HomeAway.com, Inc. v. City of New York*, 523 F. Supp. 3d 573, 592 (S.D.N.Y. 2021). In that case, the court reasoned that partner-heavy staffing is justified at the pre-discovery phase of litigation, but once document and deposition discovery commences, a greater proportion of such work should be handled by attorneys with lower billing rates. *Id.* The court reduced HomeAway's fee award by 15% because HomeAway failed to pursue discovery with less partner-heavy staffing. *Id.* Here, Plaintiffs-Intervenors did not engage in any discovery, and the primary work performed by Plaintiffs-Intervenors' partners – overseeing initial filings and leading intensive settlement negotiations – is exactly the sort of work the court in *Homeaway* identified as appropriate for partners to predominantly handle.

Moreover, Plaintiffs-Intervenors' billing records reflect that to the extent that Plaintiffs-Intervenors did engage in extended review of documents and analysis of expert reports as part of their due diligence in review of the original settlement, this work was primarily performed by an associate, not a partner.

3. Plaintiffs-Intervenors' time entries are not vague.

Defendant alleges that Plaintiffs-Intervenors' time entries are vague, but Defendant only identifies three allegedly vague time entries (concerning 3.5 hours of billed work) out of 210 total entries. These entries, however, are not vague or ambiguous when viewed in the context of other work performed around the same time. *See Rozell v. Ross-Holst*, 576 F. Supp. 2d 527, 540 (S.D.N.Y. 2008) (finding that 70 hours of challenged work for which the time entries did not indicate the subject matter of a conference, communication, or document review were not ambiguous when viewed in the context of other work performed around the same time); *see also Lenihan*, 640 F. Supp. at 826 (identifying allegedly vague time entries by their context); *Pascuiti v. New York Yankees*, 108 F. Supp. 2d 258, 270 (S.D.N.Y. 2000) (same, and noting that the level of specificity required is proportional to the amount of time charged).

First, regarding Max Utzschneider's February 9, 2024 entry for 0.4 hour spent on "emails with WMM," the day before, Mr. Utzschneider had drafted a memorandum to Jessica Harris (JH) and Walter Meginniss (WMM) regarding various issues related to GRM's potential representation, including whether there was a conflict of interest. *See* JH and WMM entries on February 8, ECF Dkt. No. 177-1, at 1. The next day, as confirmed in JH's February 9 entry, there were emails exchanged between MU, JH, and WMM regarding this memo. *Id*. WMM did not bill for these email exchanges. *Id.* In context, Mr. Utzschneider's February 9 entry is not vague, as its purpose can be confirmed by the entries the day before and JH's entry on the same day.

Second, regarding the other two allegedly vague entries (Mr. Utzschneider's February 14 entry for 0.4 hour for "review docs" and his February 21 entry for 2.7 hours for "review materials received from other parties and docket"), it is clear in context that they both entail review of documents received from Plaintiffs and Defendant in connection with the initially proposed settlement, as well as review of docket entries in preparation for drafting the letter Plaintiffs-Intervenors submitted to the Court on February 26, 2024. *See id*. at 2; ECF Dkt. No. 142. It is reasonable for counsel for an intervenor to review pertinent docket items and documents to familiarize themselves with the case at the outset of their representation, and in preparation for drafting a motion to intervene.

Moreover, the entries identified by Defendant are *de minimis*, accounting for only 3.5 hours of the 259 hours billed in this case, and do not warrant any across-the-board reduction. *See Rozell*, 576 F. Supp. 2d at 540 (declining to reduce an attorney fee award for *de minimis* vague entries).

CONCLUSION

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

Dated: October 4, 2024

Respectfully submitted,

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