UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 55
Civ. No. 05-1437 (RCL)

LAURA J. MAKRAY,

Plaintiff,

v.

THOMAS E. PEREZ,
Secretary Of Labor,

Defendant.

Civ. Action No. 12-0520 (BAH)

SUPPLEMENTAL DECLARATION OF STEVEN K. DAVIDSON

1. My name is Steven K. Davidson and I am submitting this Declaration to supplement a Declaration I submitted in this matter on April 20, 2015 ("Original Declaration") (ECF No. 85-2). Since April 20, 2015, I have reviewed the United States Court of Appeals for the District of Columbia's opinion in *Eley v. District of Columbia*, No. 13-7196 (D.C. Cir. July 10, 2015), and the Declarations of Dr. Laura A. Malowane dated May 11, 2015 (ECF No. 88-1) and July 28, 2015 (ECF No. 104-1) and the accompanying appendices.

2. In my Original Declaration, I concluded that the rate of $789 per hour sought by Seldon, Bofinger & Associates for Mr. Seldon's time from denial of summary judgment through trial is reasonable and consistent with the prevailing market rates for complex litigation in the DC metropolitan area. I reached this conclusion based on two distinct analyses: (1) a comparison to the market and (2) accounting for inflation in the market for legal services by updating the historic *Laffey* matrix. As for the first method, to evaluate the rate, I relied on my detailed knowledge of the DC metropolitan market for complex federal court litigation based on my thirty years of experience, survey data, and a fee petition from a

practitioner with similar experience to Mr. Seldon to reach my conclusion. As for the second method, I consulted the LSI-adjusted *Laffey* matrix to assess the reasonableness of the rate.

3. The opinions I expressed in my Original Declaration have not changed based on the additional information I have reviewed. Indeed, the additional information I reviewed further supports my opinion that the rate sought by Seldon, Bofinger & Associates for Mr. Seldon's time is well within the reasonable range of rates for a practitioner of Mr. Seldon's skill, experience, and reputation in the Washington, D.C. metropolitan area – the relevant community – undertaking matters of the complexity of those involved here.

4. I am being compensated as an expert witness in this matter. I provided my Original Declaration for a flat fee of $1000. I am providing this Declaration for a flat fee of $500. An associate, with an hourly rate of $515, supports me in locating and reviewing materials for my use in forming my expert opinion. My firm has been paid for the full amount of fees and costs we have charged in this matter. I have no interest in the outcome of this particular litigation, nor do I rely on fee-shifting statutes for compensation in my regular practice at Steptoe & Johnson LLP. This Declaration contains my opinions based on the facts of the representation in this case and their consistency with billing practices of other attorneys in the District of Columbia who handle complex federal litigation.

5. To compare the rate sought by Seldon, Bofinger & Associates to the market, it is necessary to define the relevant market. Here, the relevant market is complex federal litigation in the DC metropolitan area. *See Blum v. Stenson*, 465 U.S. 886, 893 (1984). Mr. Seldon is a highly experienced, successful lawyer with a stellar reputation, including as a trial lawyer. As I stated in my Original Declaration, there is no reason to charge more or less for an accomplished trial lawyer just because the field in which they specialize is employment law.

6. In my Original Declaration, I analyzed the National Law Journal's annual survey of billing rates for 2014 for Washington, D.C. law firms. *See* ECF No. 85-2, ¶8. This is an appropriate survey to consult in this case. The relevant inquiry for assessing the reasonableness of fees is the expertise of the attorney, not the size of the law firm. Many attorneys with reasonably comparable skill, experience and reputation to Mr. Seldon – highly experienced litigators, handling complex federal litigation – work at large law firms in the DC metropolitan area. There is only one market for highly accomplished trial lawyers – regardless of whether they work at a small firm or at a large firm. As such, the rates charged by highly accomplished trial lawyers at large law firms are equally indicative of the rates that are reasonable for Mr. Seldon's time.

7. Based on my extensive experience described in my Original Declaration, the rate Mr. Seldon seeks is within the range of rates charged by experienced partners litigating complex federal cases at large firms.

8. Attorneys at large firms will frequently discount their rates under certain circumstances, such that they do not collect their full rate. Typically, attorneys agree to those discounts because of the volume of work that they expect to receive from the client and an expectation (if not also a history) of prompt payment. If an attorney does not anticipate prompt payment, it would be very unlikely for a firm to agree to a discounted rate. In a situation like this case, where payment occurs years after service was provided, it would be extremely rare for an attorney's rate to be discounted.

9. Seldon, Bofinger & Associates seeks a rate of $789 for Mr. Seldon's time from the denial of summary judgment through trial. Mr. Seldon's extensive experience litigating complex cases is most valuable to his clients when preparing for and conducting the trial. A

rate of $789 per hour – even if it were not limited to this portion of the case – is within the range of rates customarily charged by trial lawyers of similar experience, skill and reputation. Additionally, the average rate sought by Mr. Seldon is considerably lower than $789 per hour, because Seldon, Bofinger & Associates accepted a rate of $520 per hour for the remainder of Mr. Seldon's time.

10. I have reviewed the analysis provided by Dr. Malowane in two declarations. Dr. Malowane has improperly defined the relevant market. The relevant market is the District of Columbia metropolitan area. Dr. Malowane's opinion, however, relies on data from the South Atlantic region, which has overall lower hourly rates, reflecting the skill and complexity of litigation in that broader area.

11. Dr. Malowane relied on The 42nd Annual Survey of Law Firm Economics ("Survey of Law Firm Economics") to conduct her analysis. She relied on data for the South Atlantic region, which includes Delaware, District of Columbia, Georgia, Florida, Maryland, North Carolina, South Carolina, Virginia and West Virginia. The data from many of these jurisdictions have little to no bearing on the rates customarily charged for complex federal litigation in the District of Columbia. The South Atlantic region is not a valid starting point for Dr. Malowane's statistical analysis.

12. Additionally, the Survey of Law Firm Economics presents limited data. For example, Dr. Malowane points to the rates presented for employment litigators with 31 years or more experience. However, Dr. Malowane fails to report that for the entire country only 30 attorneys in that category were surveyed. There is no suggestion that those 30 attorneys conduct complex federal trials. Survey of Law Firm Economics, p.166. Dr. Malowane then takes that limited national data and applies the "South Atlantic Inflator" she created to attempt

to estimate the rates for employment litigators in the South Atlantic region. Malowane Decl., July 28, 2015, ECF No. 104-1 ¶¶ 14-15.

13. As described above, the South Atlantic region is not relevant to assessing the reasonableness of the rate sought by Seldon, Bofinger & Associates for complex federal trial work in the District of Columbia. Many types of complex federal litigation are conducted principally within the District of Columbia, as such, proper comparators are solely from within the District of Columbia metropolitan area, or perhaps New York City.

14. Defendant claims that the *Laffey* rate of $520 per hour is actually "quite generous." ECF No. 104, p.5. However, Dr. Malowane's declaration does not support this conclusion as to Mr. Seldon. Even Dr. Malowane acknowledges that "[t]he top 10% of all highly experienced employment litigation attorneys in the nation's most populated urban areas have estimated billing rates of $704." Pg. 8-9. While I disagree with Dr. Malowane's methodology – this time starting with the same 30 employment litigators nationwide and using an "Urban Inflator," – she acknowledged that under her estimates many employment litigators earn more than the *Laffey* rate of $520/hour.

15. If Mr. Seldon did complex federal trial work for private corporations, his expertise, demonstrated track record and reputation would command rates in the top 10% of the complex litigation field. A rate of $789 per hour is well within the range of rates charged by the top complex civil litigators in the DC metropolitan area.

16. Contrary to Dr. Malowane's assertions, the fact that other attorneys have accepted *Laffey* rates has no bearing on the reasonableness of the rates sought by Seldon, Bofinger & Associates. The *Laffey* rate is a rate that – at least in theory – the government will not dispute. Based on my experience with fee shifting cases, I am aware that many attorneys accept *Laffey* rates for a variety of reasons, knowing that it is lower than market value. One such reason is to avoid litigation. Accepting the *Laffey* rates allows the attorney to be compensated more quickly and to avoid additional litigation to seek "fees on fees."

17. As my Original Declaration laid out, the LSI-adjusted *Laffey* matrix separately indicates that the rate sought by Seldon, Bofinger & Associates is reasonable. ¶¶ 16-17. That matrix uses the nationwide legal services component of the Consumer Price Index to update the historic *Laffey* matrix. The government advocates for the use of the USAO *Laffey* matrix, which has been updated for change in the cost of living using the Consumer Price Index for All Urban Consumers for Washington-Baltimore. The survey that Dr. Malowane utilizes – the Survey of Law Firm Economics – demonstrates that legal rates have outpaced the growth of the CPI. For example, from 1985 through 2014, the CPI increased 125%. Pg. 131-32. Over that same time period, the average billing rates for partners with 25 to 29 years of experience increased 212%. *Id.* Thus, the LSI-adjusted *Laffey* rate is a better indicator of reasonable rates in today's legal market. The USAO *Laffey* model is of limited value in determining whether a rate is reasonable for a practitioner of similar skill, experience and reputation.

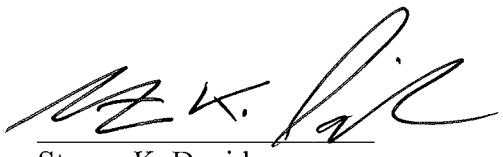
18. All of the conclusions and opinions stated above are based on my 30 years of experience in private practice as a litigator based in the District of Columbia. During my years of practice, I have litigated with counsel for other parties and as co-counsel with experienced trial lawyers in the DC metropolitan area, and have been made aware of their rates on many

occasions. These collective experiences have given me a good understanding of the practices of litigators that handle complex federal litigation.

19. All opinions expressed by me in this Declaration have been stated within a reasonable degree of professional certainty.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Washington, D.C.
September 8, 2015



Steven K. Davidson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 56
Civ. No. 05-1437 (RCL)

LAURA J. MAKRAY,

Plaintiff,

v.

THOMAS E. PEREZ,
Secretary Of Labor,

Defendant.

Civ. Action No. 12-0520 (BAH)

DECLARATION OF JOHN P. RELMAN

I, John P. Relman, hereby declare and state the following:

1. I am a civil rights lawyer with 29 years of civil rights practice experience.

2. I am a resident of the District of Columbia and am admitted to practice law in the District of Columbia and the Commonwealth of Massachusetts, as well as numerous federal courts including, but not limited to, this Court, the D.C. Circuit, and the U.S. Supreme Court.

3. I am the founder and Managing Partner of Relman, Dane & Colfax PLLC (formerly Relman & Associates PLLC and Relman & Dane PLLC) (hereinafter "the Firm"), a private law firm in Washington, D.C., that specializes in civil rights litigation.

4. The Firm exclusively litigates civil rights matters and specializes in fair housing, fair lending, employment discrimination, disability, public accommodations, and police accountability. The Firm's practice includes individual and class action lawsuits on behalf of plaintiffs who have suffered discrimination and harassment on the basis of race, national origin, color, religion, sex, disability, age, familial status, source of income, and sexual orientation. The Firm presently has twenty-two attorneys, one legal fellow, and ten paralegals. The Firm has a

national civil rights practice and is highly regarded within the civil rights community for its expertise in civil rights litigation.

5. I make this declaration in support of Plaintiffs' Petition for a Partial Award at the *Salazar*/LSI Rate. Specifically, this Declaration provides support for an award of Plaintiff's lead counsel, Robert C. Seldon, Esq., for the time he spent from the denial of summary judgment through trial at the LSI-adjusted version of the Laffey matrix rate of $789.00 per hour rather than the rate that the U.S. Attorney's Office has accepted in the USAO Laffey matrix of $520.00 per hour. In my opinion and experience, this is a reasonable market rate for Mr. Seldon, not only for a discrete portion of this case, but for its entirety.

The Background of John P. Relman

6. I graduated *cum laude* from Harvard College in 1979. In 1983, I graduated from the University of Michigan Law School. At Michigan I served as an Articles Editor for the *University of Michigan Journal of Law Reform* and received three academic honors: The Raymond K. Dykema Scholarship Award (1981-1982); the Louis Honigman Memorial Award (1983); and the Writing and Advocacy Book Award (1980-1981).

7. Following graduation from law school, I served as a law clerk for the Honorable Sam J. Ervin, III of the U.S. Court of Appeals for the Fourth Circuit and for the Honorable Joyce Hens Green of the U.S. District Court for the District of Columbia.

8. In October, 1986, I joined the National Office of the Lawyers' Committee for Civil Rights Under Law as a staff attorney. While at the National Office of the Lawyers' Committee, I litigated, in conjunction with local counsel and colleagues at the Lawyers' Committee, a variety of fair housing, employment discrimination, and death penalty cases in jurisdictions across the country. Among those cases were the following employment discrimination cases: *Bell v. City of*

Jackson (S.D. Miss.) (lead counsel) (enforcement of consent decree governing hiring and promotions in the City of Jackson Fire Department); *Anderson v. Douglas & Lomason* (N.D. Miss.) (co-counsel) (Title VII class action; race discrimination); *Byrd v. Travenol Laboratories* (N.D. Miss.) (co-counsel) (Title VII class action; race and sex discrimination).

9. In 1989, I left the National Office of the Lawyers' Committee to join the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Upon joining the Washington Lawyers' Committee, I became Director of the Fair Housing Project, a position that I held until I left the Committee in October, 1999 to found Relman & Associates. During the ten years that I served as Director of the Fair Housing Project, the Washington Lawyers' Committee maintained a national reputation as one of the country's leading centers for the litigation of fair housing, fair lending, and public accommodations cases. As Director of the Fair Housing Project, I litigated numerous fair housing and public accommodations cases in federal district courts around the country. While at the Washington Lawyers' Committee, I authored numerous publications in the area of civil rights law and litigation, including: Housing Discrimination Practice Manual (West) (Revised 2014).

10. In October, 1999, I left the Washington Lawyers' Committee to found a civil rights law firm, which is now Relman, Dane & Colfax PLLC. The Firm is described above, and some of our cases in this Court are identified below.

11. In addition to my position at the Firm, I teach and lecture in the area of civil rights law and litigation. I have recently been a member of the Adjunct Faculty of Georgetown University Law Center and the University of Michigan Law School. Over the past fifteen years I have lectured widely on civil rights issues at legal conferences in the Washington, D.C. area and around the country, and have conducted numerous seminars and trainings for lawyers in civil

rights law, litigation, and advocacy. In 2007, I was listed as one of the best lawyers in America. I have repeatedly been listed as one of the best civil rights lawyers in Washington, D.C. by the Washingtonian Magazine.

Plaintiff's Petition for a Partial Award at the *Salazar*/LSI Rate

12. Mr. Seldon, Plaintiff's lead counsel, asked that I provide a Declaration regarding the hourly rate Mr. Seldon requests in Plaintiffs' Petition for a Partial Award at the *Salazar*/LSI Rate in this action.

13. The Firm litigates civil rights cases in the United States District Court for the District of Columbia, including employment discrimination, fair housing and lending, disability, public accommodations, and police misconduct cases. These cases include, among others: *Moore, et al. v. Johnson* (federal sector employment discrimination), 760 F.3d 66 (D.C. Cir. 2014), 926 F. Supp. 2d 8 (D.D.C. 2013), 255 F.R.D. 10 (D.D.C. 2008), 437 F. Supp. 2d 156 (D.D.C. 2006); *Caudle, et al. v. District of Columbia* (employment retaliation), 08-00205 at Docket Entry 426 (jury verdict for all plaintiffs); *Young, et al. v. District of Columbia Housing Authority* (disability discrimination), 31 F. Supp. 3d 90 (D.D.C. 2014); *Brown v. Short* (police misconduct), 729 F. Supp. 2d 125 (D.D.C. 2010); *Newman v. Borders* (public accommodations), 530 F. Supp. 2d 346 (D.D.C. 2008), *National Community Reinvestment Coalition v. Accredited Home Lenders Holding Company, et al.* (lending discrimination), 573 F. Supp. 2d 70 (D.D.C. 2008); *National Fair Housing Alliance, et al. v. Prudential Insurance Company* (lending discrimination), 208 F. Supp. 2d 46 (D.D.C. 2002); *Hargraves v. Capital City Mortgage*(lending discrimination), 140 F. Supp. 2d 7 (D.D.C. 2000); *Wai v. Allstate Insurance Company* (housing and lending discrimination), 75 F. Supp. 2d 1 (D.D.C. 1999).

14. As Managing Partner at the Firm, I have knowledge of the Firm's billing rates. The

Firm maintains customary billing rates for each attorney at the Firm. These rates reflect the qualifications and experience of the attorney performing the work, as well as the legal market (the District of Columbia) where the Firm is based.

15. The Firm's current billing rates for attorneys cover a range of rates based on experience and expertise. The Firm sets rates by attorney, and does not have different rates for different types of civil rights litigation (e.g. housing versus employment discrimination) or different stages of a case. My customary rate is the highest among lawyers at the Firm.

16. For the last three years, my customary rate has always been above the LSI-adjusted Laffey rate sought for Mr. Seldon's work. Paying clients of the Firm have paid more than the LSI-adjusted Laffey rate and the USAO Laffey rate for my services.

17. In addition to my own rate being above the LSI-adjusted Laffey rate sought by Mr. Seldon of $789, I am aware that the rate of $789 is below the rate charged by skilled civil litigators with twenty or more years of experience in the Washington, D.C. market. My knowledge of rates for highly experienced civil litigators in the Washington, D.C. market comes from working with co-counsel at D.C. law firms and from submitting fee petitions in the Firm's cases. For example, three highly experienced Washington, D.C. attorneys who practice in federal court submitted declarations in support of the Firm's fee petition in *Caudle v. District of Columbia* (08-cv-00205-BJR at Docket Entry 335, Exhibits B-D). These highly experienced attorneys explained that the Firm's customary rates are comparable to or below the prevailing market rates in the District of Columbia market, including for attorneys who litigate civil rights cases on behalf of paying clients.

18. In my opinion, the rates in the version of the Laffey matrix accepted by the U.S. Attorney's Office, which currently range from $255 to $520, are well below the market for

skilled litigators in federal court in the District of Columbia.

19. Mr. Seldon has asked me to address the reasonableness of an hourly rate of $789 per hour, which is the LSI-adjusted Laffey rate for an attorney with his experience in complex civil litigation. Mr. Seldon has asked the Court that this rate be used for his time after the denial of summary judgment until the conclusion of trial.

20. I am aware of Mr. Seldon's relevant experience in employment and civil rights litigation as described in the Declaration that Mr. Seldon is providing to the Court to support the request that the Court award of a portion of his time at the LSI-adjusted Laffey rate.

21. In my opinion, based on my knowledge of billing and practices of my firm and in the market for highly experienced practitioners in federal civil rights litigation, $789 is a reasonable rate to charge for all of Mr. Seldon's work.

I hereby declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Executed on: 4/20/15

John P. Relman

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 57
Civ. No. 05-1437 (RCL)

EXCERPT

BRIGGITTA HARDIN,
Plaintiff,

v.

MICK DADLANI, et al.,
Defendants.

Civil Action No. 1:11-cv-02052 (RBW)

DECLARATION OF MEGAN CACACE

I, Megan Cacace, hereby declare as follows:

1. I am a partner at the law firm of Relman, Dane & Colfax, PLLC, which represented Plaintiff Briggitta Hardin. I have knowledge of the facts stated herein.

2. Relman, Dane & Colfax is a twenty-five-attorney public interest law firm founded in 1999 specializing in employment discrimination, fair housing, fair lending, public accommodations, and police accountability litigation.

3. Relman, Dane & Colfax has been involved in this case since its inception in 2011. I have had primary responsibility for the day-to-day litigation and management of the case for the duration of the litigation.

4. I have litigated multiple civil rights cases in federal court, conducting both bench trials and jury trials in employment discrimination and fair housing cases. My practice focuses on employment discrimination and fair housing litigation.

5. Prior to joining Relman, Dane & Colfax in 2008, I worked in the Employment Discrimination Project of the National Lawyers' Committee for Civil Rights as a recipient of Harvard Law School's Irving R. Kaufman Fellowship. While at the National Lawyers' Committee, I served as trial counsel in a Title VII employment case in federal court. I graduated

magna cum laude from Harvard Law School in 2006 and clerked for the Honorable Morris E. Lasker of the U.S. District Court for the District of Massachusetts before joining the National Lawyers' Committee.

6. I am a member of the District of Columbia, New York, and Massachusetts bars, and am admitted to practice in the U.S. District Court for the District of Columbia, the U.S District Court for the District of Massachusetts, the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Supreme Court.

7. Jia Cobb, an attorney at Relman, Dane & Colfax, also played a significant role in the litigation of this case from discovery through trial. Since Ms. Cobb joined Relman, Dane & Colfax in 2012, she has been involved in every phase of the case from discovery through dispositive motions and trial.

8. Prior to joining Relman, Dane & Colfax, Ms. Cobb worked for approximately six years as a trial attorney at the Public Defender Service for the District of Columbia (PDS). At PDS, Ms. Cobb tried dozens of cases to verdict and worked as a supervising attorney for incoming trial lawyers. Ms. Cobb graduated *cum laude* from Harvard Law School in 2005. After graduation, she clerked for Chief Judge Diane Wood of the Seventh Circuit Court of Appeals.

9. Plaintiff's counsel leanly staffed this case, with myself and Ms. Cobb being the primary attorneys responsible for the entirety of the litigation. In order to conduct the litigation efficiently and effectively, Ms. Cobb and I divided tasks, with each of us drafting different portions of briefs, arguing different motions, and having responsibility for preparing examinations of different witnesses at trial.

10. In addition to myself and Ms. Cobb, Plaintiff seeks to recover fees for the work performed by the four paralegals primarily assigned to the case.

11. The primary Relman, Dane & Colfax paralegals on the case—Hannah Kieschnick, Joni Hirsch, Casey Graetz, and Nicole Mauri—played a host of critical roles throughout the litigation. Ms. Kieschnick was involved in the case from its inception in 2011 until 2013 (when her term as a paralegal at Relman, Dane & Colfax concluded), and provided critical support in the discovery phase, including reviewing and analyzing Defendants' document productions, and assisting in factual development. Ms. Kieschnick was replaced by Ms. Hirsch, who was the primary paralegal assigned to the case from 2014 through 2015 during the punitive damages discovery period and the reopened discovery period. In 2015, Ms. Hirsch left Relman, Dane & Colfax's employment and Ms. Graetz and Ms. Mauri took over as the primary paralegals on the case as the litigation intensity increased as trial approached. Throughout the case, Plaintiff's counsel relied substantially on paralegals' knowledge of the factual record and documents produced in the case and tasked them with assisting in the identification of relevant documents for use at depositions, during summary judgment, and as exhibits at trial. The paralegals' detailed cataloguing and familiarity with the documents produced in discovery enabled Plaintiff's counsel to entrust such important assignments to paralegals rather than attorneys who bill at a higher rate. Ms. Graetz and Ms. Mauri also provided vital assistance prior to and during trial, including the significant task of preparing and organizing trial exhibits, meticulously documenting the Court's pretrial rulings on deposition designations and other matters (in circumstances where no official transcript would be available prior to trial), communicating with and managing witnesses during trial, and documenting key evidence and testimony presented at trial for counsel's use in preparing closing argument.

12. Consistent with Relman, Dane & Colfax's practice, all attorneys and paralegals maintained contemporaneous records of the amount of time and descriptions of the tasks and

activities that they performed in this case. Those records and descriptions were entered into the electronic database that the firm maintains for this purpose.

13. The record of the time spent, tasks, and activities entered into the firm's database for the timekeepers for whom Plaintiff seeks recovery are reflected in Exhibit A to this Declaration.

14. The value of the time expended is calculated in Exhibit A using the firm's hourly rates that it customarily charges to its paying clients. Those rates are $400/hour for Ms. Cobb, $375/hour for Ms. Cacace, and $175/hour for paralegals. These rates are set forth in the rate sheet that is attached hereto as Exhibit B.

15. I became a partner at Relman, Dane & Colfax on January 1, 2016. My billing rate increased above $375/hour in 2016 in conjunction with my becoming partner. However, Plaintiff does not seek to recover my 2016 rate for the work (including trial) I performed in 2016. Instead, in an exercise of billing discretion, Plaintiff seeks to recover only pre-partner associate rates in effect prior to 2016, rather than my higher partner rate in effect in 2016.

16. I have carefully reviewed each time entry and description for each attorney and staff member for whom fees are sought and have exercised billing judgment to forego recovery of certain work so as to ensure that the fees requested are reasonable. I did not alter the content of the time entries themselves to remove time that has been excluded from Plaintiff's fee petition in the exercise of billing discretion. In other words, Exhibit A reflects the original descriptions and content of counsel's billing records, as opposed to a description of solely those tasks for which Plaintiff seeks compensation.

17. The specific reductions to Plaintiff's lodestar that I made in the exercise of billing judgment fall into the following categories: (1) all time expended by all timekeepers except myself, Ms. Cobb, and the few paralegals with primary responsibility for the case; (2) attorney or

paralegal time associated with attending depositions or hearings at which that attorney or paralegal's presence was not required; (3) time expended on any motion on which Plaintiff did not substantially prevail; (4) time spent completing tasks qualifying as clerical in nature; (5) travel time; (6) time associated with responding to press inquiries; (7) time spent transitioning counsel onto the case; and (8) hours associated with responding to Defendants' November 1, 2015 Trial Brief. Each is described in more detail below.

18. First, I excluded from Plaintiff's petition, all work performed by all attorneys who worked on the case, with the exception of myself and Ms. Cobb. By eliminating all of the work performed by other attorneys (including senior partners), I cut from Plaintiff's fee petition 1,369.54 hours of attorney work on this case, worth over $525,691. In doing so, I chose not to seek compensation for five attorneys who devoted over 100 hours to the case. Foregoing recovery of those five attorneys' time alone eliminated $425,571 from Plaintiff's fee petition.

19. In eliminating from Plaintiff's fee petition all attorney work except that performed by myself and Ms. Cobb, I also excluded the significant contributions of attorneys from the Washington Lawyers' Committee for Civil rights and Urban Affairs ("Lawyers' Committee"). The Washington Lawyers' Committee is a non-profit civil rights organization dedicated to combatting discrimination and poverty in the Washington, D.C. community. They have been co-counsel with Relman, Dane & Colfax since this case first began in 2011. Attorneys from the Lawyers' Committee made important contributions to this case, including conducting a thorough factual investigation, identifying and interviewing witnesses, contributing to pleadings and briefs, participating in mediation, and providing other strategic input. Nevertheless, in the exercise of billing discretion, I excluded 65 hours of work the skilled Lawyers' Committee attorneys contributed to this case, reducing Plaintiff's fee petition by $28,585.

20. My exercise of billing discretion to exclude timekeepers also involved foregoing recovery for all paralegal work performed on the case except for that performed by the four paralegals with primary responsibility for the case (Hannah Kieschnick, Joni Hirsch, Casey Graetz, and Nicole Mauri). (These paralegals did not all work on the case at once. Plaintiff seeks recovery for no more than two paralegals at a time; there are four paralegals total for whom Plaintiff seeks compensation because different paralegals were assigned to the case at different times, as paralegals came and left employment at Relman, Dane & Colfax). By excluding all other paralegal work on this case, I reduced Plaintiff's fee petition by 221 hours worth $38,727.

21. Overall, my exclusion of timekeepers in the exercise of billing judgment reduced Plaintiff's fee petition by 1,572.56 hours of work, valued at $557,652, which amounts to reduction in Plaintiff's lodestar of more than 20 percent.

22. In further exercise of billing discretion, I excluded all attorney and paralegal time spent attending any deposition or hearing at which their presence was not required. Any attorney or paralegal time spent at a deposition was cut, except for the one attorney taking or defending the deposition. Similarly, I excluded all attorney and paralegal time spent attending any discovery hearings or status conferences, except for the attorney who argued the motion or participated in the conference. The only proceedings for which Plaintiff seeks compensation for paralegal time is for the paralegal work performed during pretrial conferences and trial, where they played a vital role in documenting court rulings, managing witnesses, and preparing notes for counsel's use at oral argument and in closing. Similarly, the only proceedings for which Plaintiff seeks recovery for both my time and Ms. Cobb's time are pretrial conferences (which both counsel were required to attend and in which both counsel participated) and trial. By removing the time

spent by attorneys and paralegals at depositions, conferences, and hearings, I reduced Plaintiff's fee request by 129.7 hours or $45,335.

23. I also exercised billing judgment to remove all time associated with work on motions on which Plaintiff did not at least partially prevail. Accordingly, I cut all attorney and paralegal time associated with: (1) opposing Defendants' request for production of Plaintiff's medical records; (2) seeking a ruling regarding witness Jon Calvert's ability to give testimony pursuant to subpoena regardless of any non-disparagement clause (*see* Doc.44); (3) Plaintiff's Requests for Admission (*see* Docs. 49 and 50); and (4) Plaintiff's Motion to Exclude Undisclosed Witnesses (Doc. 81). *Id.* at ¶. This exercise of billing judgment reduced Plaintiff's petition by another 127.7 hours or $47,199.50 of work.

24. I also removed another 82.9 hours and $15,722.50 from Plaintiff's fee petition by cutting all attorney and paralegal time devoted to any task that could be described as "clerical" in nature, such as photocopying, scheduling, filing briefs, bates stamping documents, updating calendars, handling invoices, or communicating with court reporters regarding depositions or transcripts.

25. I also exercised billing judgment to exclude from Plaintiff's fee request all attorney and paralegal time spent traveling to and from depositions, hearings, or meetings. In doing so, I removed 44.8 hours valued at $14,067.50 from Plaintiff's fee petition.

26. In further exercise of billing discretion, I removed all time spent responding to press inquiries, reducing Plaintiff's fee petition by 4.4 hours and $1,590.

27. In an effort to ensure the reasonableness of Plaintiff's fee request, I excluded time that Ms. Cobb spent reviewing pleadings, witness statements, and case documents to get up to speed on the case when she first joined the firm. That exclusion reduced Plaintiff's fee petition by $1,240.

28. The Court previously ordered Defendants to compensate Plaintiff for the time Plaintiff's counsel spent preparing a response to Defendants' November 1, 2015 Trial Brief. While the amount Defendants paid in November 2015 was less than the total amount Plaintiff's counsel reasonably expended responding to the November 1, 2015 Trial Brief, Plaintiff nevertheless agreed to forego recovering the difference so as to avoid having to raise the issue with the Court at the time. Therefore, in keeping with Plaintiff's agreement, I excluded from Plaintiff's fee petition all time devoted to responding to Defendants' November 1 Trial Brief, including the $1,637.50 of work performed by myself, Ms. Cobb, and paralegals.

29. Before the exercise of billing judgment, Plaintiff's total lodestar of attorney's fees incurred was $2,782.249.50. Through the above-described deductions, I reduced Plaintiff's fee request by nearly 25 percent, foregoing recovery of over 1,972 hours of work valued at $684,444. As a result, rather than seeking her full lodestar fee, Plaintiff seeks only $2,097,805 in attorney's fees.

30. I have reviewed all of the descriptions of time for which Plaintiffs seek compensation, as set forth in Exhibit A, and based on my experience both in this case and in litigating civil rights cases (in particular employment discrimination cases) generally, I believe that the time for which Relman, Dane & Colfax seeks compensation was necessary and essential to litigate this case and obtain the favorable results that were achieved for Plaintiff.

31. Plaintiff sought $26,025.50 in costs through her verified Bill of Costs (Doc. 181) filed on February 18, 2016. The costs sought through Plaintiff's Bill of Costs are those automatically taxable under Local Rule 54.1.

32. Separate and apart from the costs automatically taxable under Local Rule 54.1, Plaintiff seeks through her Motion for Attorney's Fees and Costs $25,510.96 in costs reimbursable pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988.

33. The categories of costs for which Plaintiff seeks reimbursement in her Motion for Attorney's Fees and Costs under §§ 1920 and 1988 are: (a) $17,975.75 in online research fees; (b) $875.17 for travel and lodging expenses necessarily incurred by counsel in connection with the deposition of an out-of-state witness; (c) $4,552.72 in appearance and mileage or travel fees paid to witnesses in connection with their depositions; and (d) $2,107.35 in copying and printing costs (distinct from the $300 in copying fees sought in Plaintiff's Bill of Costs).

34. Plaintiff seeks to recover $17,975.75 in online research costs necessarily incurred during the case. These costs include fees for legal research on Westlaw, which was necessary to address legal questions and issues raised during the litigation, prepare filings and arguments, and attempt to resolve disputes with opposing counsel. These online research costs also include fees for public records searches on LexisNexis, which were performed to locate potential witnesses. Attached as Exhibit C to this declaration are Plaintiff's counsel's invoice records documenting these online research charges.

35. Plaintiff seeks to recover costs counsel was required to incur traveling to Florida to depose Sean Goss, a witness identified by Defendants as having relevant knowledge in the case. The $875.17 Plaintiff seeks to recover represents airfare, lodging, and costs associated with travel within Florida for the one attorney (Jia Cobb) who traveled to Florida to depose Sean Goss. Records of these expenses are attached to this Declaration as Exhibit D.

36. Plaintiff also seeks reimbursement for $4,552.72 in fees paid in connection with witness appearances at depositions. This figure includes $895.02 in appearance and mileage fees for 14

witnesses traveling from within the jurisdiction and $3,657.70 in appearance fees, airfare, and overnight hotel costs for two witnesses, Corrie Tabb and Sonia Bel Hadj, who resided in Atlanta, Georgia, and Abu Dhabi, United Arab Emirates, respectively, at the time of their depositions. Records of these expenditures are contained in Exhibit E, attached hereto.

37. Plaintiff seeks reimbursement for $2,107.35 in printing and copying costs charged at $0.10/page and necessarily incurred in this matter. These printing and copying records are attached Exhibit F to this Declaration.

38. I have carefully reviewed the costs for which Plaintiff seeks reimbursement and have determined that they were necessarily incurred.

39. Plaintiff does not seek reimbursement for all costs incurred in this case. Plaintiff has voluntarily excluded $3,173.28 in reasonably incurred costs from her Motion for Attorney's Fees and Costs. In doing so, Plaintiff reduced her cost request by approximately 11 percent. These excluded costs include the following: (a) long distance phone charges associated with communicating with witnesses outside the jurisdiction; (b) postage fees for mailings to deponents, parties, and witnesses; (c) courier services for delivery of materials to deponents, witnesses, and the Court; (d) private investigator costs incurred to locate key witnesses; (e) fees associated with accessing records in the electronic Pacer database of court filings; and (f) costs charged by health care providers to provide copies of Plaintiff's medical records to Plaintiff (which were then produced to Defendants).

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

EXECUTED ON: 3/18/16 BY: _____
Date Megan Cacace

EXHIBIT

B

RELMAN, DANE & COLFAX PLLC

2015 RATES **Effective 06/01/2015**

John P. Relman	$825/hr
Stephen M. Dane	$700/hr
Reed N. Colfax	$650/hr
Michael Allen	$650/hr
Jennifer I. Klar	$600/hr
Glenn Schlactus	$600/hr
Jocelyn Bramble	$650/hr
Sandra Wilmore	$575/hr
Ken Edwards	$575/hr
Scott Chang	$550/hr
Sasha Samberg-Champion	$550/hr
Stephen Smith	$525/hr
Eric Sublett	$425/hr
Matthew Tiberio	$400/hr
Jia Cobb	$400/hr
Megan Cacace	$375/hr
Jamie Crook	$375/hr
Tasha Brown	$350/hr
Ryan Downer	$350/hr
Tara Ramchandani	$350/hr
Laura Arandes	$325/hr
Yaya Wu	$325/hr
Jean Zachariasiewicz	$325/hr
Civil Rights Fellow	$300/hr
Legal Interns/Summer Associates	$195/hr
Paralegals	$175/hr

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JUANITA CAMPBELL, et al.,	)	
	)	
Plaintiffs,	)	No. 1:13-cv-00324 VJW
	)	
v.	)	Hon. Victor J. Wolski
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Plaintiffs' Exhibit 58
Civ. No. 05-1437 (RCL)

EXCERPT

LANDOWNERS' MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES AND LITIGATION EXPENSES

Respectfully submitted:
August 31, 2016

MARK F. (THOR) HEARNE, II
LINDSAY S.C. BRINTON
MEGHAN S. LARGENT
STEPHEN S. DAVIS
ARENT FOX, LLP
1717 K Street, NW
Washington, D.C. 20036
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DEBRA J. ALBIN-RILEY
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Los Angeles, CA 90013
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Fax: (213) 629-7401
debra.riley@arentfox.com

Counsel for Landowners

Department for this litigation strategy, stating, "[i]n contrast [to the "open, transparent, and helpful" Army Corps of Engineers], the Department of Justice pursued a litigation strategy of contesting each and every issue"); *see also* Mark F. (Thor) Hearne, *et al.*, *The Trails Act: Railroading Property Owners and Taxpayers for More than a Quarter Century*, 45 ABA REAL PROPERTY, TRUST & ESTATE LAW JOURNAL (Spring 2010), pp. 170-75.

B. After prevailing, the owners now ask this Court to award an unadjusted lodestar fee that is supported by a wealth of evidence.

Section 4654(c) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) says this Court "*shall*" award owners a "reasonable attorney fee" and reimburse their litigation expenses. In an inverse condemnation action, the U.S. Solicitor General emphasized to the Supreme Court that the URA differed from other fee-shifting statutes because it mandates an attorney fee award upon settlement with the government:

> [W]hile most fee-shifting provisions make awards discretionary, Section 4654(c) is phrased in mandatory terms, requiring … the Attorney General (when she settles a case without a court judgment) "*shall* determine and award" a sum to "reimburse [the takings] plaintiff•"for his reasonable litigation expenses.
>
> *Haggart v. Woodley*, No. 15-1072,
> United States Brief in Opposition, p. 10.[3]

After prevailing on the merits and achieving a settlement in which the government admitted liability and agreed to pay compensation, the owners now submit their attorney fees and expenses. We ask this Court to reimburse these owners' unadjusted lodestar fee and actual out-of-pocket expenses. The lodestar fee was calculated using the usual hourly rates Arent Fox charges private clients for similar complex federal litigation. The fee submission is supported by a wealth of evidence including detailed billing records, expert declarations, and market surveys

[3] Citations omitted; emphasis by the Solicitor General. Brief available at: <https://www.justice.gov/osg/supreme-court-briefs> (last visited August 31, 2016).

demonstrating the lodestar fee is a reasonable attorney fee. Through June 2016 the total fee is $689,161 and the out-of-pocket litigation expenses are $48,003. The supporting evidence includes:

- Detailed billing records and invoices for all litigation expenses through June 2016 (Exhibit 1).
- The declaration of the owners' lead counsel, Thor Hearne, testifying that the lodestar fee we request this Court to award is consistent with prevailing market rates charged (and paid by) private clients (Exhibit 2).
- Elizabeth Munno's declaration (Exhibit 3). Munno is Arent Fox's chief financial officer. Munno testified that Arent Fox is a Washington, D.C.-based law firm, and the hourly rates Arent Fox charges "are consistent with market conditions" and are the usual and customary rates Arent Fox charges as its usual rate-setting practice for comparable complex federal litigation charged to and paid by private clients. Exhibit 3 ¶¶3, 5.
- Two declarations by Dr. Michael Kavanaugh, an economist and expert (Exhibits 4 and 5). Dr. Kavanaugh's method of adjusting the *Laffey* Matrix was first adopted in *Salazar v. District of Columbia*, 123 F. Supp.2d 8 (D.D.C. 2000), and has been followed by the D.C. Circuit and D.C. district court.
- Two declarations of Dr. Malowane, an expert on law firm economics (Exhibits 6 and 7). Malowane was the Justice Department's expert witness in at least three prior attorney fee lawsuits. Dr. Malowane testified Arent Fox's rates "are competitive with market rates." Exhibit 6 ¶24.
- Two surveys of prevailing market rates – the 2016 *PriceWaterhouseCoopers* survey and the 2014 *National Law Journal Billing Survey* (Exhibit 8). These surveys demonstrate

that, although Arent Fox is one of the top-fifty Washington, D.C., firms, Arent Fox's hourly rates are consistent with, *or lower than*, the hourly rates charged by comparable firms.[4]

- The LSI-adjusted *Laffey*-rates for 2016 are very similar to Arent Fox's usual hourly rates.
- The Justice Department time and expense summaries (Exhibit 9).
- In an earlier Trails Act litigation the government agreed Arent Fox's 2013 rates of between $706 and $375 were consistent with then-prevailing Washington, D.C., rates.[5] The supporting evidence confirms Arent Fox's 2016 rates of between $819 and $210 are consistent with the now prevailing Washington, D.C., rates.

[4] In 2013 Arent Fox's high and low hourly billing rate for partners was $765 and $400 and for associates was $475 and $240. *See* Exhibit 8. This is slightly less than the rates other Washington DC-based firms charged which were between $935 and $406 for a partner and between $515 and $236 for associates. In 2016 Arent Fox's billing rates were similarly consistent with or slightly below rates comparable firms charged. *Id.*

[5] In *Biery* the government's lawyer, Kris Tardiff, admitted, "I think the Court can probably just accept for that purpose only the forum rates (for Washington DC) as plaintiffs are arguing them to be." Exhibit 10 (hearing transcript).

Carolyn Smith Pravlik

From: Largent, Meghan <Meghan.Largent@arentfox.com>
Sent: Tuesday, September 20, 2016 3:54 PM
To: Carolyn Smith Pravlik
Cc: Davis, Stephen S.; Thornet
Subject: Campbell v. US Fee Application to CFC

Plaintiffs' Exhibit 59
Civ. No. 05-1437 (RCL)

Carolyn,

In the case *Campbell v. US*, the highest rate we requested, $819, was a for a partner with 20+ years' experience. Please let me know if you need any further clarification of the rates requested in our fee application in *Campbell*.

Thanks,
Meghan

Meghan Largent
Counsel

Arent Fox LLP | **Attorneys at Law**
112 S. Hanley Road, Ste. 200
Clayton, MO 63105-3418

1717 K Street, NW
Washington, DC 20036-5342

314.296.4003 DIRECT | 202.857.6395 FAX
meghan.largent@arentfox.com | www.arentfox.com

Plaintiffs' Exhibit 60
Civ. No. 05-1437 (RCL)

EXCERPT

Brown et al. v. Medicis Pharmaceutical Corporation,

No. 1:13-cv-01345-RJL

EXHIBIT 1

Exhibit to Plaintiffs' Memorandum of Points and Authorities in Support of Joint Motion for Final Approval of Class Settlement

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Bonnie Brown, Leslie Baginski, Lisa Cummings-Gallina, Laurie Introp, Lisa Levine, Bridget Oliveto, & Lindsay Pihaly on behalf of themselves and all others similarly situated, Plaintiffs, v. Medicis Pharmaceutical Corporation, Defendant.	NO. 1:13-cv-01345 CLASS ACTION

DECLARATION OF CYRUS MEHRI IN SUPPORT OF FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Pursuant to 28 U.S.C. § 1746, I, Cyrus Mehri, hereby declare and state, as follows:

1. I am over the age of eighteen years. Except as otherwise noted, I have personal knowledge of the facts set forth herein in which my firm was involved, and am competent to testify thereto.

2. I am a founding partner of Mehri & Skalet, PLLC ("M&S"), and co-lead class counsel (along with Sara Wyn Kane of Valli Kane & Vagnini LLP) for the Plaintiffs in the above-referenced action. We are assisted by a number of skilled lawyers in our firms who have helped obtain an excellent result for the Class in this case.

3. We have decided to submit only a single declaration to facilitate the Court's review.

4. I am making this declaration in connection with the parties' Joint Motion for Final Approval of the Proposed Class Settlement, and Plaintiffs' Motion for An Award of Attorneys'

Fees and Expense Reimbursement.

Qualifications of Co-Lead Class Counsel

5. My firm, M&S, represents plaintiffs in group actions, particularly employment discrimination class actions. During the past 25 years, I have represented plaintiffs in dozens of class actions in a variety of fields, including consumer fraud and antitrust. Most significantly, over the past 20 years, I have had the privilege of representing women and people of color in employment discrimination and other civil rights class actions. Prior to private practice, I clerked for the Honorable John T. Nixon, Chief Judge of the Middle District of Tennessee. I graduated from Cornell Law School in 1988 where I served as Article Editor of the Cornell Journal on International Law.

6. I currently serve or have previously served as co-lead class counsel for certified plaintiff classes in *Roberts v. Texaco Inc.*, 94 Civ. 2015 (CLB) (S.D.N.Y. 1997) (settled for $176 million and broad programmatic relief on behalf of African-American employees); *Ingram v. Coca-Cola Company*, No. 1:98-CV-3679, 200 F.R.D. 685 (N.D. Ga. 2000) (settled for $192 million and broad programmatic relief on behalf of salaried African-American employees); *Robinson v. Ford Motor Co.*, No. 1:04-CV-00844, 2005 U.S. Dist. LEXIS 11673 (S.D. Ohio 2005) (settled for $10 million and creation of over 270 apprenticeship positions for African Americans); *Augst-Johnson v. Morgan Stanley & Co.*, No. 1:06-CV-01142 (D.D.C. 2007) (recently referred to Kollar-Kotelly, J.) ($46 million settlement and programmatic relief on behalf of female financial advisors); *Amochaev v. Citigroup Global Markets d/b/a Smith Barney*, No. 3:05-cv-01298-PJH (N.D. Cal. 2008) ($33 million settlement and similar injunctive relief); *Norflet v. John Hancock Life Insurance*, 3:04CV1099 (JBA) (D. Conn. 2009) ($24.4 million settlement of behalf of African Americans denied equal opportunity in the purchase of life

insurance); *Carter v. Wells Fargo Advisors, LLC*, No. 1:09-CV-01752-CKK (D.D.C. 2011) (Kollar- Kotelly, J.) ($32 million settlement and similar injunctive relief and certifying Mehri & Skalet as class counsel). This Court has also appointed my firm as co-lead interim class counsel on behalf of consumers in *Mackmin v. Visa Inc. et. al.*, 1:11-CV-1831 (D.D.C. March 3, 2016).

7. Michael Lieder has been heavily involved in this case since joining my firm in 2012. He has served as lead counsel or in another leading role in several major employment discrimination class actions in this District. *See Thornton v. Nat'l R.R. Passenger Corp.*, No. 1:98-cv-890 (D.D.C.) (Sullivan, J.)($16 million plus broad injunctive relief in race discrimination class action); *McLaurin v. Nat'l R.R. Passenger Corp,* 1:98-cv-2019 (D.D.C.) (Sullivan, J.) ($8 million plus broad injunctive relief in race discrimination class action); *Hyman v. First Union Corp.*, No. 94-1043 (D.D.C.) (Lamberth, J.) ($58.5 million in age discrimination collective action); *In re PEPCO Employment Litig.*, No. 86-0603, 1993 U.S. Dist. LEXIS 7905 (D.D.C.) (June 8, 1993) (Lamberth, J.) ($38.4 million and broad injunctive relief). He also has served in similar roles in employment discrimination class cases throughout the country, including in the TV Writers Cases, which settled for $70 million in California state court.

8. Mr. Lieder and I have recently co-authored a chapter in a book on statistics for employment cases. The book is named *Adverse Impact Analysis: Understanding Data, Statistics and Risk* and is planned for publication in early 2017. Both of us are frequent speakers at CLEs involving employment class actions.

9. My co-lead counsel, Sara Wyn Kane, is a founding partner of the firm Valli Kane & Vagnini, and has primarily devoted her practice to employment discrimination and civil rights. She has represented thousands of employees in mass, group, and class actions in labor and employment cases before numerous Federal Courts around the country and in the EEOC as

Brown et al. v. Medicis Pharmaceutical Corporation,

No. 1:13-cv-01345-RJL

EXHIBIT A

Exhibit to Mehri Declaration

TIME REPORT - TOTALS FOR ALL FIRMS
Firm Name: Mehri & Skalet, PLLC and Valli Kane & Vagnini LLP
Client Name: Medicis Gender
Reporting Period: Inception - May 2016

Mehri & Skalet Staff	Status	Current Hourly Rate	Total Hours	Lodestar
Cyrus Mehri	P	$795.00	532.35	$423,218.25
Steven Skalet	P	$795.00	5.10	$4,054.50
Ellen Eardley	P	$660.00	870.05	$574,233.00
Michael Lieder	OC	$795.00	302.17	$240,225.15
Janelle Carter	A	$585.00	27.50	$16,087.50
Joanna Wasik	A	$330.00	147.10	$48,543.00
Karla Gilbride	A	$585.00	0.20	$117.00
Lindsay Dembner	A	$330.00	207.25	$68,392.50
Taryn Null	A	$585.00	134.25	$78,536.25
Teresa Yeh	A	$405.00	46.00	$18,630.00
David March	PL	$180.00	39.85	$7,173.00
Earl Lin	PL	$180.00	0.40	$72.00
Elizabeth Susong	PL	$180.00	20.00	$3,600.00
Jasmin Alford	PL	$180.00	34.40	$6,192.00
Katherine Afzal	PL	$180.00	42.90	$7,722.00
Kristen Ferris	PL	$180.00	5.10	$918.00
Lee-ann Foster	PL	$180.00	2.50	$450.00
Logan Meltzer	PL	$180.00	10.00	$1,800.00
Nabila Abdulhafiz	PL	$180.00	0.25	$45.00
Rachel Heidmann	PL	$180.00	7.00	$1,260.00
Rebecca Bohl	PL	$180.00	156.75	$28,215.00
Suritia Taylor	PL	$180.00	4.50	$810.00
Tatiana Reyes	PL	$180.00	23.75	$4,275.00
Zachary Kamin	PL	$180.00	0.10	$18.00
Total Mehri & Skalet Hours & Lodestar Post-Billing Judgment			**2619.47**	**$1,534,587.15**

Valli, Kane & Vagnini Staff	Status	Current Hourly Rate	Total Hours	Lodestar
James A. Vagnini	P	$575.00	93.86	$53,969.50
Robert J. Valli, Jr.	P	$600.00	206.14	$123,684.00
Sara W. Kane	P	$575.00	897.60	$516,120.00
Andrew Kimble	A	$250.00	31.05	$7,762.50
Deborah Rubin	A	$350.00	367.47	$128,614.50
Monica Hincken	A	$225.00	24.94	$5,611.50
Jesse Rose	PL	$150.00	13.85	$2,077.50
Hope Zapata	PL	$150.00	7.00	$1,050.00
Ana Martinez	PL	$150.00	16.28	$2,442.00
Caren Leipsic	PL	$150.00	2.39	$358.50
Siobhan Watts	PL	$150.00	4.50	$675.00
Melissa Young	PL	$175.00	8.87	$1,552.25
Maryanne Greenfield	PL	$175.00	6.45	$1,128.75
Justin Levy	PL	$150.00	3.00	$450.00
Intern	I	$150.00	4.48	$672.00
Case Clerk	PL	$150.00	0.13	$19.50
Total Pre-Billing Judgment			1688.01	$846,187.50
Billing Judgment			-55.55	-$30,938.37
Total Valli, Kane & Vagnini Hours & Lodestar Post-Billing Judgment			**1632.46**	**$815,249.13**
Total Combined Hours & Lodestar			**4251.93**	**$2,349,836.28**

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Plaintiffs' Exhibit 61
Civ. No. 05-1437 (RCL)

Civ. No. 12-1491 (JDB)

DECLARATION OF DAVID K. COLAPINTO

David K. Colapinto hereby deposes and states:

1. I am a member in good standing of the bar of the District of Columbia, and a member of the bar of the following state and federal courts: Supreme Judicial Court of Massachusetts, District of Columbia Court of Appeals, U.S. Supreme Court, U.S. Courts of Appeals for the District of Columbia Circuit, the Federal Circuit, Ninth Circuit, the Eleventh Circuit, and the U.S. District Court for the District of Columbia, U.S. District Court of the Southern District of Indiana and U.S. District Court for the District of Massachusetts.

2. I obtained my license to practice law in 1988. I am also a member of the American Bar Association.

3. I graduated with a Bachelor of Arts degree from Boston University in 1984. I was awarded a Juris Doctorate degree from Antioch School of Law in 1987.

4. In the course of my 27-year career as an attorney, I have developed expertise in complex civil litigation, with specific emphasis on whistleblower laws, employment laws and also litigation under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy

Act, 5 U.S.C. § 552a. I have represented numerous federal employees in employment and/or retaliation-related cases and as a component of those representations I often seek information or file requests pursuant to FOIA and the Privacy Act and I have extensive experience pursuing FOIA and Privacy Act requests through the administrative process and in litigation before federal courts. Many of my clients and cases have been nationally recognized.

5. In 1988, my current partners, Michael D. Kohn and Stephen M. Kohn, and I founded the law firm of Kohn, Kohn and Colapinto, LLP, located in Washington, D.C. Since 1988 I have been employed as a Partner with this firm. The firm was founded as a public interest firm, reflecting the non-economic goals of the partners and reflecting the partners' strong commitment to representation of employees and whistleblowers. All of the partners had worked or clerked for a non-profit whistleblower advocacy organization prior to forming the law firm, and the firm was dedicated, from its inception, to helping meritorious whistleblowers and employees.

6. In 1988, I also co-founded the non-profit organization, the National Whistleblower Center ("NWC"). This organization has remained active in assisting whistleblowers on a *pro bono* basis. I have held a leadership position with that organization since 1988, and have been continuously and actively involved in supporting employees in civil rights and whistleblower cases since 1988. The NWC has also submitted FOIA requests to government agencies to obtain information related to whistleblowing issues and I have advised and represented the NWC regarding FOIA issues and in FOIA litigation. On occasion, the NWC has become a party to FOIA cases as a plaintiff.

7. Since its formation, the Kohn firm has specialized in the representation of employee whistleblowers. Most of our clients cannot afford the firm's market rates.

Consequently, the firm regularly discounts its hourly fee or waives the advance payment of such fees in consideration of contingency fee payments and/or obtaining our full market rate from an award of statutory fees. When the firm makes a reduced fee or contingency fee retainer agreement with a client, it reflects our intention to seek our full market rate from the opposing party through a fee petition.

8. The Kohn firm has extensive experience and expertise specifically litigating complex FOIA and Privacy Act cases. I have successfully represented plaintiffs in FOIA and Privacy Act cases and won legal victories or successfully settled those cases. *Edmonds v. FBI*, 417 F.3d 1319 (D.C. Cir. 2005) (favorable ruling on FOIA case holding that an order granting expedited processing satisfies the prevailing party standard for granting an award of attorneys fees); *Whitehurst v. FBI, et al.*, C.A. No. 96-572(GK)(D.D.C.), Order (Feb. 5, 1997) (granting motion for expedited processing under FOIA and Privacy Act); *NACDL and Whitehurst v. DOJ*, No. 97-CV-00372(GK) (D.D.C.) and *NACDL, et al. v. DOJ,* 182 F.3d 981 (D.C. Cir. 1999) (Successful Freedom of Information litigation resulting in the release of the DOJ Inspector General report exposing high- level misconduct within the FBI crime lab, and awarding interim attorneys fees under FOIA); *Forensic Justice Project v. FBI,* C.A. No. 04-cv-01415-PLF (D.D.C. 2005) (settlement resulting in waiver of copying and search fees and expedited processing claims); and *National Whistleblower Center v. HHS,* 904 F. Supp.2d 59 (D.D.C. 2012) (Obtaining preliminary injunction forcing FDA to immediately release records related to FDA's email monitoring of employee-whistleblowers; precedent holding that agencies waive right to withhold privileged documents that contain strong evidence of government misconduct.).

9. The Kohn firm is a private law firm that practices law in the public interest. The firm bases its fee structure in large part on the *Laffey* Matrix, as adjusted for inflation using the

method approved by the court in *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13 (D.D.C. 2000).

10. Our relevant current fees are as follows:

Senior Partners (thirty plus years):	$995.00/hour
Senior Partners (25-29 years):	$895.00/hour
Partners (20-24 years):	$789.00/hour
Associate Attorneys (1-3 years experience):	$328.00/hour
Paralegal/Law Clerk:	$179.00/hour

11. The firm's full fee structure is published on its web site, www.kkc.com/the-firm/standard-billing-rates.

12. Clients who have the means to pay the firm's standard market rates are required to pay those fees, and they do, in fact, pay those fees. Prospective clients regularly contact the firm and agree to pay the firm's market rate. Based on the nature of the case, the firm often agrees to represent clients who are willing to pay market rates. For example, the Kohn firm currently has a client who is being charged $995.00 per hour for the time that one of the senior partners is devoting to that client's representation, and $179.00 per hour for paralegal/law clerk time. The fees in that matter are billed on an hourly basis at the Kohn firm's hourly standard market rates and they are being paid. Additionally, another current client of the firm has been charged and paid fees that are billed at the Kohn firm's hourly standard market rates. Other clients of the Kohn firm have in the past also been billed and paid fees at the firm's hourly standard market rates.

13. Because the Kohn firm is a public interest firm, we also agree to represent clients who lack the financial resources to pay the firm's market rate, but whose cases raise significant

issues regarding the vindication of civil rights, rights under federal fee-shifting statutes (such as the FOIA and Privacy Act) and/or the vindication of the policy goals behind whistleblower protection. The fact that the firm is willing to reduce market fee rates in public interest cases is also reflected on the law firm's web page.

14. For clients who have important public interest cases, but have inadequate financial resources, the firm either discounts its hourly rate, requests that the client pay an affordable amount of money each month toward his or her bill and/or agrees to represent the client on a pure statutory fee and/or contingency fee basis. In all of the discounted/statutory fee cases, the firm expects to obtain its full standard market rate (or more if there is a high contingency fee) based on a settlement of the claims or based on the fees awarded/obtained upon final judgment (if there is no settlement). This intention is explicitly described in the agreement the firm signed with each client.

15. This policy of regularly charging clients reduced fees, or working purely on a contingency/fee-shifting basis, causes the Kohn firm to incur substantial financial risk. My partners and I frequently pass up opportunities to represent wealthier clients who could afford our hourly rates in favor of clients with less means, but who have suits that we believe are of greater importance to the public interest.

16. FOIA cases are comparable to complex litigation under analogous fee-shifting statutes, such as the federal employment and whistleblower statutes. Based on more than 25 years experience litigating whistleblower and employment cases and also litigating claims arising under the FOIA and Privacy Acts I can attest that FOIA litigation is complex civil litigation. This is based on my personal experiences successfully litigating *Whitehurst v. FBI, National Whistleblower Center v. HHS, Edmonds v. FBI,* and *Forensic Justice Project v. FBI,*

cited above, all of which involved statutory fee claims under FOIA and the Privacy Act. All of those cases (except for *National Whistleblower Center v. HHS,* which is pending) settled so the fee issue was not litigated in those cases.

17. While *Laffey* rates can be considered a starting point for statutory fees they should not be the end point in determining reasonable market rates. However, the DOJ's *Laffey* rates are considerably below the prevailing hourly market rates charged by law firms that handle complex litigation in the District of Columbia. A survey of market rates for private sector firms in the District of Columbia published by the *National Law Journal* in January of 2014 supports that prevailing hourly market rates for senior partners at such firms in Washington, D.C. range between $780-$1250 per hour as of January of 2014.[1] The attached chart lists the firms located in the District of Columbia and shows the data extracted about the hourly rates charged by those firms as published by the *National Law* Journal in January of 2014. These firms were chosen because, at the time, each maintained its largest office in Washington, DC.

18. It is my opinion, based on long experience, that a FOIA case would be extremely undesirable in the private bar. Its undesirability is especially true because the only relief available is injunctive relief to compel the disclosure of records or compliance with the FOIA statute. Without the possibility of recovering any damages, and the high risks involved in prevailing in FOIA litigation and the delays in resolving such cases, there would be little motive for an attorney to take the case.

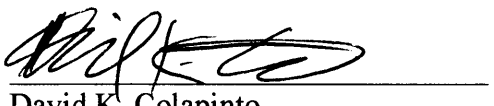
19. Another factor that makes FOIA cases undesirable within the private bar is that the defendant is a large federal agency with substantial resources to litigate and pursue appeals. These cases are often hard-fought and unquestionably demand a large amount of time and labor

[1] *See* http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country.

given the need to take a large federal agency to court to compel compliance with the FOIA statute.

20. It is critical for public interest attorneys and public interest groups and firms to be paid the full hourly rate for similar services offered in the Washington, D.C. market.

I declare, pursuant to 28 U.S.C. §1746, that the above is true and correct to the best of my knowledge.



David K. Colapinto

8/17/15

Dated

ATTACHMENT TO DECLARATION OF DAVID K. COLAPINTO

CHART OF RATES CHARGED BY PRIVATE SECTOR FIRMS IN D.C.

Firm	Equity/Senior Partner	Junior Partner	Senior Associate	Mid-Level Associate	Junior Associate
Wilmer	$1250	$735	$695	$290	$75
Pillsbury Winthrop	$1070	$615	$860	$520	$375
Hogan Lovells	$1000	$705	n/a	n/a	n/a
Arnold & Porter	$950	$670	$610	$500	$345
Akin Gump	$1220	$615	$660	$525	$365
Covington & Burling	$890	$605	$585	$415	$320
Dickstein Shapiro	$1250	$590	$585	$475	$310
Patton Boggs	$780	$490	$475	$405	$325
Wiley Rein	$950	$550	$535	$445	$320
Venable	$1075	$470	$575	$430	$295
Arent Fox	$860	$500	$595	$395	$275
Holland & Knight	$1035	$335	$575	$325	$210

Source: National Law Journal, "The National Law Journal's annual survey of law firm billing rates for partners and associates" (Jan. 13, 2014).

Read more: http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country?ixzz3j5okFi8U

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 62
Civ. No. 05-1437 (RCL)

EXCERPT

SHAWN WESTFAHL,)
)
PLAINTIFF) Civil Action No. 1:11-cv-2210 (CRC)
vs.)
)
DISTRICT OF COLUMBIA, *et al.*,)
)
)
DEFENDANTS)
)

DECLARATION OF JEFFREY L. LIGHT

1. My name is Jeffrey L. Light. I am of the attorneys for Plaintiff in the above-captioned case.

Education and Experience

2. I graduated from Georgetown University Law Center in 2004.

3. I have been licensed to practice law in the District of Columbia since 2004, and have regularly handled criminal, civil rights, and appellate litigation since that time.

4. I have worked as a solo practitioner for my entire career. After graduating law school, I was the sole employee of the nonprofit Patients not Patents, through which I litigated complex consumer protection cases in federal and D.C. courts. I subsequently established the Law Office of Jeffrey L. Light.

5. I have handled over a dozen § 1983 or *Bivens* civil rights cases in this Court involving allegations of police misconduct. Some examples of police misconduct cases in this Court for which I achieved a favorable judgment or settlement for my client are: *(Sara) Shaw v. District of Columbia*, 1:13-cv-1174 (§ 1983 excessive force, settled); *McClinton v. Dyson* 1:12-cv-536 (§

1983 excessive force, settled); *(Patti) Shaw v. District of Columbia*, 1:12-cv-538 (§ 1983 and Bivens, strip search and failure to protect, settled); *Patterson v. Lemke*, 1:13-cv-85 (Bivens false arrest, settled); *Dudani v. District of Columbia*, 1:14-cv-1209 (§ 1983 unlawful detention, accepted offer of judgment); *Jenkins v. Coley*, 1:13-cv-553 (§ 1983 excessive force, settled with one Defendant, obtained summary judgment for other defendant); *Pipkin v. District of Columbia*, 1:14-cv-1170 (§ 1983 false arrest, accepted offer of judgment); *Tucker v. District of Columbia*, 1:12-cv-777 (§ 1983 false arrest, settled).

Billing Rates

6. In addition to civil rights cases, which I typically handle on a contingency-fee or fee-shifting basis, my practice includes litigation for paying clients. For cases involving complex federal litigation, my typical and customary practice is to charge clients rates which are explicitly tied to the LSI-adjusted *Laffey* matrix. My retainer agreements with clients who pay an hourly rate for complex federal litigation include the following language (with the amount modified based on the then-current LSI-Adjusted *Laffey* Matrix rate): "The firm bases its customary hourly rate on the Adjusted *Laffey* Matrix. (http://www.laffeymatrix.com/see.html) As of May 31, 2014, my hourly rate was $655/hr." I have many clients who pay me a rate tied to the LSI-Adjusted Laffey Matrix.

7. My current standard hourly billing rate is $661/hr., which I set based on the LSI-adjusted *Laffey* matrix. I have many clients who pay this rate without any cap or discounts. Among those clients who pay an hourly rate, for certain public interest cases, I charge the same rate, but cap the number of hours that the client will be billed for. For clients who cannot afford an hourly

rate, I do not charge an hourly rate, and either perform the work pro bono, agree to a contingency fee, or depend on fee-shifting statutes.

8. I have also been awarded the LSI-adjusted *Laffey* matrix rate for litigation in the District of Columbia courts. I was counsel of record for the defendants in *Goldman Sachs v. Stop Huntingdon Animal Cruelty*, a case in which the plaintiffs sought and obtained a preliminary injunction against a group of animal rights protesters. I successfully obtained a reversal of the preliminary injunction from the D.C. Court of Appeals. Although the majority in *Ortberg v. Goldman Sachs Group*, 64 A.3d 158 (D.C. 2013) (as the case was captioned on appeal) decided the case on common law grounds, almost all of the briefing revolved around constitutional issues. On remand, the Superior Court awarded me attorney's fees for all of the work performed on appeal obtaining the reversal of the preliminary injunction. The Court awarded me attorney fees at the rate of $567/hr, reflecting the then-current LSI-adjusted *Laffey* matrix rates for an attorney who had been out of law school for 8-10 years. I had been out of law school for 9 years at that time. A copy of the Superior Court's order is included in this filing as Exhibit 5.

Billing Practice

9. I have attached an itemization of my time-keeping records. The time itemized on the attachment hereto was spent in reference to the above-captioned case.

10. My standard practice is to contemporaneously record my time using computer software. For the period of June 5, 2012 to the present, I used ClickTime, which has a "stopwatch" feature allowing me to turn off the timer when I am working on other cases or matters.

11. Prior to June 5, 2012, I used LEXIS NEXIS Practice Advantage software to contemporaneously record my time. Like ClickTime, Practice Advantage has a "stopwatch" feature allowing me to turn off the timer when I am working on other cases or matters.

12. All time spent on this case (and expenses incurred) were reasonable and necessary for representing Plaintiff.

13. I exercised my discretion not to include in my fee petition all hours that were for purely administrative tasks of the kind that would typically be performed by secretaries. I further exercised my discretion not to charge for travel time.

14. In calculating the number of hours I expended on this case, I excluded time spent on work which was solely related to unsuccessful claims whenever it was possible to do so.

Turning Down Other Work

15. As a solo practitioner, I have a very limited amount of time and resources to devote to litigation. Due to my acceptance of this case, which demanded hundreds of hours of work, I have had to turn down several potentially lucrative cases. One of these cases was an employment discrimination, which I referred to a colleague. The case settled relatively quickly, earning the attorney nearly $20,000 in fees. Other cases I have had to turn down include FOIA cases with potential clients who were willing to pay an hourly rate based on the LSI-adjusted *Laffey* matrix rate.

Involvement with this Case

16. The plaintiff in this case, Mr. Shawn Westfahl, contacted me a few days after the incident at issue in this case. He told me that he was looking for a civil rights lawyer to represent him.

17. Mr. Westfahl informed me that I was recommended to him as an attorney known to the activist community in Washington, D.C. as providing excellent representation for political protesters. Mr. Westfahl explained what happened to him at the protest and asked me to represent him.

18. Mr. Westfahl did not have the resources to pay me an hourly rate, so I agreed to represent him on a contingency fee basis. Indeed, Mr. Westfahl did not even have the resources to retain a lawyer to defend him in his criminal case, and was being represented by a CJA Attorney. The charges against Mr. Westfahl were serious misdemeanors – Assault on a Police Officer and Possession of a Prohibited Weapon.

19. I agreed to take the case for Mr. Westfahl because I believed that it would be in the public interest to vindicate the constitutional rights of a protester against whom the police used excessive force.

20. As a sole practitioner, however, I had limited financial resources to pay for expert witnesses and deposition costs. I also do not have any assistance from a paralegal or secretary. I therefore asked a colleague of mine, Daniel Schultz, to join as co-counsel on the case. Attorney Schultz employed an excellent paralegal named Ryan Andrews, and their assistance proved invaluable.

21. After Attorney Schultz retired, prior to the trial in this case, I sought out another attorney to continue the case with me as co-counsel. I asked Attorney Tamara Miller to co-counsel the remainder of the case and she agreed.

I, Jeffrey L. Light, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 9, 2015

/s/ Jeffrey Light
Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213
Jeffrey@LawOfficeOfJeffreyLight.com
Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 63
Civ. No. 05-1437 (RCL)

SHAWN WESTFAHL,	)	
	)	
PLAINTIFF	)	Civil Action No. 1:11-cv-2210 (CRC)
vs.	)	
	)	
DISTRICT OF COLUMBIA, *et al.*,	)	
	)	
	)	
DEFENDANTS	)	
	)	

FEE AFFIDAVIT OF TAMARA L. MILLER

1. I, Tamara L. Miller, as one of the attorneys for Plaintiff in the above-captioned case, state the following is true to the best of my knowledge and belief:

2. I graduated from the University of Michigan Law School in 1985, and have been a licensed attorney since November 1985. I was admitted to practice law in Illinois in 1985; and in 1996, I was admitted to practice law in the District of Columbia, the U.S. District Court for the District of Columbia, the U.S. District Court for the District of Maryland, the U.S. Court of Veterans Appeals, and the U.S. Supreme Court. I was admitted to the U.S. Court of Appeals for the Fourth Circuit in 2011, and the U.S. Court of Appeals for the District of Columbia Circuit in 2013.

3. I have been an Adjunct Law Professor at the George Washington University Law School since 2014.

4. Since October 2010, I have been the Managing Partner of MillerMasciola, Attorneys-At-Law, 1825 K St., N.W., Suite 1150, Washington, DC. My practice involves complex civil rights litigation and general civil litigation. Our law firm handles complex medical malpractice cases, to include cases under the Federal Tort Claims Act brought by family members of military

service members receiving substandard medical care causing catastrophic injury; federal sector employment cases, to include race and gender discrimination claims under Title VII of the Civil Rights Act, disability claims under the Americans with Disabilities Act, and related statutes; civil rights cases to include allegations of police misconduct under § 1983; and general litigation to include breach of contracts and breach of privacy claims.

5. Within the past five years, I have achieved favorable judgments or settlements for my clients in this Court (*Bregman v. Perles et al.,* CA 11-cv-01886), Maryland Circuit Court (*Donna Doe, et al. v. Community Radiology Associates, Inc.,* CAL12-40826); and the District of Maryland (*Reeves v. Medstar So. Maryland Hospital Center*, CA 13-cv-02163; *Davis v. Northrop Grumman Systems Corporation*, CA 14-2107). I have presented cases in the U.S. Court of Appeals for the District of Columbia Circuit (*Bregman v. Perles et al.*, USCA 12-7091, and in the U.S. Court of Appeals for the Fourth Circuit Court of Appeals (*Hancox v. Performance Anesthesia, P.A.*, 10-2077). I currently am lead counsel in several cases pending in this Court (*Espinosa v. HUD,* CA 14-482, DDC; *Cahill v. VA,* 15-cv-01447, DDC; *Ross v. U.S. Capitol Police*, CA 14-cv-1400, DDC). I also have successfully represented numerous federal employees in administrative proceedings before the Equal Employment Opportunity Commission and Merit Systems Protection Board.

6. In November 1985, following my admission to the Illinois Bar, I began my active duty military service in the U.S. Air Force as a Judge Advocate. I gained experience in federal sector employment law in 1992, when I became a Trial Attorney in the Air Force General Law Division, Civilian Personnel Section, in Rosslyn Virginia. In this capacity, for two years, I represented the Air Force in litigation involving labor-management relations and employment discrimination in U.S. District Courts and Courts of Appeals throughout the country.

7. After separating from active duty in the U.S. Air Force in February 1995, I joined the law firm of Robins, Kaplan, Miller & Ciresi, in Washington, D.C., as a Senior Litigation Associate. During my approximately two year tenure with the firm, my practice focused on federal and private sector employment law, representing employers and employees before federal courts in the District of Columbia and the Eastern District of Virginia, and before the D.C. Human Rights Commission.

8. From October 1996 through July 2003, at the U.S. Department of Justice, Civil Rights Division, Criminal Section, I prosecuted cases involving criminal violations of federal civil rights statutes, including 4th Amendment excessive force cases under color of law, hate crimes, church arsons, violence at women's reproductive health clinics, human trafficking and worker exploitation, in close coordination with United States Attorney's Offices nationwide. I also served as a Deputy Chief for five years, and supervised ten trial attorneys prosecuting criminal civil rights cases in the western United States. I personally handled several high profile prosecutions as lead counsel involving the use of excessive force by police officers and correctional officials in Alabama, Connecticut, Florida, and Colorado, securing indictments after "flipping" officer witnesses previously covering up for fellow officers and felony convictions in jury trials and negotiated plea agreements.

9. In August 2003, I was appointed to the Senior Executive Service (SES), and became the Director of Civil Rights at the Transportation Security Administration (TSA's). In this capacity, I led programs in equal employment opportunity, alternative dispute resolution, external civil rights compliance, and diversity management, enforcing Title VII of the Civil Rights Act of 1964 and other federal civil rights statutes ensuring equal employment opportunity for TSA's workforce. In October 2005, I was appointed as the TSA Special Counselor to the Assistant

Secretary, where I was responsible for oversight and leadership of the TSA Offices of Civil Rights and Liberties, Privacy, Freedom of Information, Ombudsman, Executive Secretariat, GAO/IG Audit Liaison, Sensitive Security Information, and Transportation Security Redress. In this capacity, I continued to work to ensure the effective enforcement of federal employment statutes guaranteeing equal employment opportunity for TSA employees nationwide.

10. December 2006, I joined the Department of Health and Human Services (HHS), as the Deputy Director for Civil Rights, where I provided national-level leadership and oversight to ten regional offices and 23 senior civil rights analysts and equal opportunity specialists in the Headquarters Civil Rights Division within the HHS Office for Civil Rights, to enforce Title VI of the Civil Rights Act and related federal civil rights statutes requiring nondiscrimination in HHS-funded programs through investigations and compliance reviews to help ensure that people throughout our country have access to quality health care and social services. From this position, I retired from the federal service in July 2010, and began in private practice handling complex civil rights cases and general civil litigation since that time.

Billing Rates

11. While I typically handle medical malpractice and police misconduct cases on a contingency-fee basis, for federal employment litigation my typical and customary practice is to charge clients rates that are explicitly tied to the LSI-adjusted *Laffey* matrix. My retainer agreements with clients who pay an hourly rate for complex federal litigation include the following language (with the amount modified based on the then-current LSI-Adjusted *Laffey* Matrix rate): "The firm bases its customary hourly rate on the Adjusted *Laffey* Matrix. (http://www.laffeymatrix.com/see.html). As of May 31, 2014, my hourly rate, as an attorney out of law school for over 20 years, was $796/hr.

12. My discounted hourly billing rate for federal employees is $425 per hour. Pursuant to *Hatfield v. Secretary of Navy*, EEOC Appeal No. 01892909 (1989), my law firm charges federal sector clients at rates lower than the standard and accepted market rates for discrimination cases for non-economic, public interest reasons. In *Hatfield*, the Commission found that attorneys who can demonstrate they charge reduced rates to federal employees in discrimination cases, based on public interest motives, are nevertheless entitled to be compensated at their higher market rate. See also *Lai v. Securities and Exchange Commission*, EEOC Appeal No. 01974652 (2/02/00) (attorney fees awarded at prevailing market rate notwithstanding reduced rate retainer agreement).

Billing Practice

13. I have attached an itemization of my time-keeping records. The time itemized on the attachment hereto was spent in reference to the above-captioned case.

14. My standard practice is to contemporaneously record my time using billing software in tenths of an hour, which is standard practice for attorneys representing employees.

15. All time spent on this case (and expenses incurred) were reasonable and necessary for representing Plaintiff.

16. I exercised my discretion not to include in my fee petition all hours that were for purely administrative tasks of the kind that would typically be performed by secretaries. I further exercised my discretion not to charge for travel time.

17. In calculating the number of hours I expended on this case, I excluded time spent on work which was solely related to unsuccessful claims whenever it was possible to do so.

I, Tamara L. Miller, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 2, 2015

/s/ *Tamara L. Miller*

TAMARA L. MILLER (DC BAR NO. 435156)
MILLERMASCIOLA, ATTORNEYS AT LAW
1825 K Street, NW, Suite 1150
Washington, DC 20006
Tel: (202) 223-8181
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Tamara.miller@millermasciola.com

Counsel for Plaintiff Shawn Westfahl

Billing List

Print | Close Window

INVOICED AND UN-INVOICED TIME ▼

Date	Client Name	Project	Description	Hours	Rate	Amount
5/15/2015	Shawn Westfahl	Legal Services	Attorney meeting re case and trial strategy	2.50	$789.00	$1,972.50
6/18/2015	Shawn Westfahl	Legal Services	Meeting with co-counsel Jeff Light re prehearing report, motions, witnesses and evidence	2.00	$789.00	$1,578.00
6/19/2015	Shawn Westfahl	Paralegal Services	Prepare praecipe to enter appearance of Tamara Miller as counsel.	0.40	$179.00	$71.60
6/19/2015	Shawn Westfahl	Paralegal Services	Compile initial draft of plaintiff's proposed jury instructions.	2.00	$179.00	$358.00
6/26/2015	Shawn Westfahl	Legal Services	Review and edit draft Pl. Motion in Limine, and confer with co-counsel re same	1.00	$789.00	$789.00
6/29/2015	Shawn Westfahl	Legal Services	Correspondence with expert witness Robert Klotz re trial prep	0.20	$789.00	$157.80
6/30/2015	Shawn Westfahl	Legal Services	Correspondence from expert Klotz re preparation and availability	0.10	$789.00	$78.90
7/2/2015	Shawn Westfahl	Paralegal Services	Preparation and mailing of deposition materials to expert Klotz.	0.30	$179.00	$53.70
7/6/2015	Shawn Westfahl	Legal Services	Correspondence with expert Klotz re schedule	0.10	$789.00	$78.90
7/6/2015	Shawn Westfahl	Legal Services	Review and edit Def. Voir Dire for possible joint submission, final draft jury instructions and telecom with co-counsel re trial strategy and edits.	1.10	$789.00	$867.90
7/7/2015	Shawn Westfahl	Legal Services	Correspondence with co-counsel re videographer - and editing video for trial purposes	0.10	$789.00	$78.90
7/13/2015	Shawn Westfahl	Legal Services	Trial prep meeting with co-counsel - review videos, discuss evidence and witnesses	3.00	$789.00	$2,367.00
7/13/2015	Shawn Westfahl	Paralegal Services	Assembly of trial pleadings binder for Attorney Miller.	1.00	$179.00	$179.00
7/14/2015	Shawn Westfahl	Paralegal Services	Telephone call with witness Max Ace.	0.40	$179.00	$71.60

7/15/2015	Shawn Westfahl	Paralegal Services	Discussion with attorneys of agenda for trial planning.	0.30	$179.00	$53.70
7/15/2015	Shawn Westfahl	Paralegal Services	E-mail communication with witness Max Ace.	0.10	$179.00	$17.90
7/17/2015	Shawn Westfahl	Legal Services	Pretrial Conference with Judge Cooper, pre and post meetings with co-counsel	2.50	$789.00	$1,972.50
7/17/2015	Shawn Westfahl	Paralegal Services	Pretrial conference planning, note-taking, and post-conference strategy meeting.	2.50	$179.00	$447.50
7/20/2015	Shawn Westfahl	Legal Services	Review expert witness Klotz expert reports, deposition transcript and police reports.	2.45	$789.00	$1,933.05
7/20/2015	Shawn Westfahl	Legal Services	Review Officer Robinson UFIR and deposition transcript.	1.50	$789.00	$1,183.50
7/20/2015	Shawn Westfahl	Paralegal Services	Researching travel arrangements for witness Mr. Biros.	0.50	$179.00	$89.50
7/21/2015	Shawn Westfahl	Paralegal Services	Assembly, organization, and mailing of trial prep materials to expert Klotz.	1.50	$179.00	$268.50
7/21/2015	Shawn Westfahl	Legal Services	Telecon with expert witness Bob Klotz de trial preparation and testimony	1.00	$789.00	$789.00
7/22/2015	Shawn Westfahl	Paralegal Services	Researching and finalizing flight, hotel, and taxi arrangements for witness Mr. Biros.	0.90	$179.00	$161.10
7/23/2015	Shawn Westfahl	Paralegal Services	Prepare subpoena, witness fee check, and package of materials for potential witness Dr. Mark Carney; conduct witness-location research; telephone call with Dr. Carney's employer to assess availability to receive service; delivery of package of materials to process server.	2.20	$179.00	$393.80
7/23/2015	Shawn Westfahl	Legal Services	Trial preparation - determine order of witnesses, witness strategy, Confer with Trial consultant Masciola re witness testimony	2.00	$789.00	$1,578.00
7/26/2015	Shawn Westfahl	Paralegal Services	Plan and rehearse of audiovisual technology for trial; assist with witness preparation; prepare physical exhibits for use in trial.	7.50	$179.00	$1,342.50
7/26/2015	Shawn Westfahl	Legal Services	Trial Witness preparation (Eestfahl, Biros) - and moot opening statement and exihibhts display	7.50	$789.00	$5,917.50
7/26/2015	Shawn Westfahl	Legal Services	Draft Openjng Statement	2.00	$789.00	$1,578.00
7/27/2015	Shawn Westfahl	Legal Services	Trial day 1	9.00	$789.00	$7,101.00
7/27/2015	Shawn Westfahl	Legal Services	Finalize Openig Statement	1.80	$789.00	$1,420.20

7/27/2015	Shawn Westfahl	Paralegal Services	Note taking and operating A/V presentation during day one of trial.	9.00	$179.00	$1,611.00
7/28/2015	Shawn Westfahl	Paralegal Services	Correction and submission of plaintiff's trial exhibit list, review and bookmarking of defendant deposition videos; create summary of deposition transcripts; note-taking and feedback for mooting of closing arguments; selection of video stills and excerpts.	6.50	$179.00	$1,163.50
7/28/2015	Shawn Westfahl	Legal Services	Pretrial preparation meeting with expert Robert Klotz	2.50	$789.00	$1,972.50
7/28/2015	Shawn Westfahl	Legal Services	Prepare outline of direct testimony for expert witness Klotz	1.50	$789.00	$1,183.50
7/28/2015	Shawn Westfahl	Legal Services	Trial preparation - moot closing argument, prepare demonstrative stills of videos, review deposition excerpts for defendants' cross, correspondence with agency counsel re Plaintiff's witnesses, review additional agency exhibits.	5.80	$789.00	$4,576.20
7/29/2015	Shawn Westfahl	Legal Services	Trial day 2	9.50	$789.00	$7,495.50
7/29/2015	Shawn Westfahl	Legal Services	Prepare cross examination for Officer defendants and witnesses	2.50	$789.00	$1,972.50
7/29/2015	Shawn Westfahl	Paralegal Services	Operating A/V presentation and note-taking during day two of trial.	9.50	$179.00	$1,700.50
7/30/2015	Shawn Westfahl	Paralegal Services	Note-taking, preparation and operation of A/V presentation during day three of trial.	8.80	$179.00	$1,575.20
7/30/2015	Shawn Westfahl	Legal Services	Trial day 3	8.80	$789.00	$6,943.20
7/30/2015	Shawn Westfahl	Legal Services	Prepare cross examination for defense expert witness	1.00	$789.00	$789.00
TOTALS				**124.85**		**$65,932.65**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 64
Civ. No. 05-1437 (RCL)

EXCERPT

ROBERT R. PRUNTY,
Plaintiff,

v.

VIVENDI, ET AL.,
Defendants

Case No.: 1:14-cv-02073-APM

DECLARATION OF JESSICA RING AMUNSON
IN SUPPORT OF VIVENDI DEFENDANTS' MOTION FOR ATTORNEYS' FEES

JESSICA RING AMUNSON, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney admitted to the United States District Court for the District of Columbia and am a partner at Jenner & Block LLP ("Jenner"). I am serving as counsel for Defendants Vivendi SA ("Vivendi"), UMG Recordings, Inc. ("UMG"), and The Island Def Jam Music Group ("Def Jam") (collectively, the "Vivendi Defendants") in this matter. I submit this declaration in support of the Vivendi Defendants' Motion for Attorneys' Fees.

Jenner's Work On Behalf Of The Vivendi Defendants

2. On December 9, 2014, Plaintiff instituted this action by filing a Complaint against fourteen defendants, including the Vivendi Defendants. (ECF No. 1.) However, Plaintiff never filed proof of service with this Court showing that his original complaint was served on the Vivendi Defendants, and the Vivendi Defendants therefore did not respond to the Complaint.

3. On February 2, 2015, Plaintiff filed an Amended Complaint against multiple defendants, including the Vivendi Defendants. (ECF No. 6.) The Amended Complaint alleged

six claims against the Vivendi Defendants: violation of the Thirteenth Amendment; a copyright infringement claim; two common law fraud claims; and two statutory civil rights claims. (*Id.*)

4. On February 3, 2015, after filing the Amended Complaint, Plaintiff filed a motion for a default judgment against Vivendi for its purported failure to respond to the initial Complaint. (ECF No. 8.) Plaintiff sought a judgment against Vivendi for $75 million. (*Id.* ¶ 7.)

5. As this Court recognized when it denied Plaintiff's motion for default judgment, at the time Plaintiff filed his motion for entry of a default judgment, the initial Complaint was no longer operative, rendering Plaintiff's motion moot. (ECF No. 24 at 2.) Moreover, the motion was procedurally improper. *Id.* However, Vivendi was forced to filed an opposition to the motion. (ECF No. 14.)

6. On February 19, 2015, I requested from Plaintiff a one-week extension of the Vivendi Defendants' time to answer Plaintiff's Amended Complaint. This request was made via telephone.

7. Plaintiff refused to grant the requested reasonable extension of the Vivendi Defendants' time to answer his Amended Complaint. (*See* ECF No. 12 ¶ 8.) Because of this refusal, the Vivendi Defendants were forced to move the Court for additional time. (*See* ECF No. 12.)

8. On February 26, 2015, the Vivendi Defendants timely filed their motion to dismiss the Amended Complaint for failure to state a claim, which addressed all six claims filed against them. Because Jenner, on behalf of the other defendants in the case, had already briefed a motion to dismiss five of the six claims in the Amended Complaint (*See* ECF No. 10), Jenner spent the vast majority of its time briefing the Copyright Act claim, which Plaintiff alleged only against the Vivendi Defendants.

The Vivendi Defendants' Request For Attorneys' Fees

9. The Vivendi Defendants request attorneys' fees totaling $36,699.20 for the work performed by two attorneys and one paralegal at Jenner in connection with Plaintiff's three statutory claims.

10. The invoice issued by Jenner in this matter is attached hereto as Exhibit A. As reflected in the invoice, Jenner has billed the Vivendi Defendants for its work on an hourly basis. The invoice includes a summary of the charges, along with detailed billing records that describe the work performed by each attorney or paralegal and how much time was spent on each task.

11. The total fees billed to the Vivendi Defendants, as reflected in the invoice, were $47,965.60. However, in the exercise of reasonable billing judgment, the Vivendi Defendants are requesting a lesser amount than the total reflected in the invoice for two reasons. First, the Vivendi Defendants have not included the time billed by Michael DeSanctis, a partner at Jenner whom Plaintiff named as a defendant in the case. Second, although Jenner spent the great majority of its representation of the Vivendi Defendants addressing the Copyright Act claim against them, the Vivendi Defendants have in good faith reduced the fees billed (less Mr. DeSanctis's fees) by twenty percent to account for any of Jenner's representation that was related to the defense of the non-statutory claims against the Vivendi Defendants.

12. The total fees sought are summarized in Exhibit B. Exhibit B summarizes the fees sought for each individual, listing the attorney or paralegal who billed time, the number of hours billed, the hourly rate that was charged (already discounted from Jenner's standard rates), the invoiced amount for each individual, the 20% reduction of that invoiced amount, and the total fees sought.

13. The primary attorneys who billed time on this matter are identified below, along with their experience, hourly rates, and involvement with the case. The valuable work performed by the paralegal on this matter, who was supervised by the primary attorneys, is detailed in the invoice attached as Exhibit A.

14. I am a partner at Jenner, an international law firm respected for its litigation expertise. I have acted as lead counsel for the Vivendi Defendants in this matter. I have been the supervising partner on this case and have had ultimate decision-making responsibility since its inception. I have practiced law for over 11 years and have been involved in litigation and appellate matters involving highly complex areas of law. A true and correct copy of my work experience from Jenner's website is attached hereto as Exhibit C. My billing rate on this matter was $613 per hour. The total fees sought for my work are $5,786.72.

15. Michelle Singer is an experienced litigation associate who was the primary drafter of the documents filed in this case on behalf of the Vivendi Defendants. A true and correct copy of Ms. Singer's work experience from Jenner's website is attached hereto as Exhibit D. Ms. Singer's billing rate on this matter was $502 per hour. The total fees sought for Ms. Singer's work are $29,035.68.

16. The hourly rates charged for my work and for Ms. Singer's work are comparable to rates charged by lawyers with similar expertise who are similarly employed at large, well-respected law firms. *See, e.g.*, *Billing Rates Across the Country*, Nat'l L. J., Jan. 13, 2014, *available at* http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country.

Reasonableness of Attorneys' Fees

17. As reflected in the contemporaneous time records, the time spent by Jenner was both reasonable and necessary to defend this action. The litigation, while frivolous, required significant efforts to defend. Jenner has reviewed the factual record, researched and briefed an opposition to a motion for default judgment, and researched and briefed a motion to dismiss.[1] Throughout the litigation, Jenner never staffed more than two primary attorneys on the matter – one handling day-to-day and drafting responsibilities and one supervising the matter.

18. In addition, the Vivendi Defendants coordinated their efforts closely with the other defendants in the case to eliminate duplicative work wherever possible. For example, Jenner took the lead on researching and briefing the opposition to the motion Plaintiff filed pursuant to Federal Rule of Civil Procedure 60 (ECF No. 28), which the Vivendi Defendants joined. Because Jenner was one of the defendants on whose behalf that opposition was filed, Jenner did not bill the Vivendi Defendants for any of its services related to that opposition brief. Jenner likewise did not bill the Vivendi Defendants for the costs involved in researching and drafting the opposition to the motion to dismiss filed by the non-Vivendi Defendants.

***

19. For the foregoing reasons, the Vivendi Defendants' request for an award in the amount of $36,699.20 in attorneys' fees should be granted in its entirety.

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

Executed on: October 1, 2015
Washington, DC

/s/ Jessica Ring Amunson
Jessica Ring Amunson

[1] The Vivendi Defendants will seek fees relating to the current motion in their Reply.

EXHIBIT A

LAW OFFICES
JENNER & BLOCK LLP
353 N. Clark Street
CHICAGO, ILLINOIS 60654-3456
(312) 222-9350

3/15/15	MOS	4.00	Edited reply brief in accordance with comments from S. Bauman [3.8] corresponded with J. Amunson re same [.1]; corresponded with C. Olson re cite-checking of brief [.1].	2,008.00
3/16/15	CLO	2.20	Cite checked reply memorandum in support of motion to dismiss first amended complaint.	506.00
3/16/15	MOS	1.70	Made cite-checking edits to reply brief [.9]; spoke and corresponded with C. Olson re same [.2]; edited reply brief in accordance with edits from S. Bauman [.5]; corresponded with J. Amunson re same [.1].	853.40
3/17/15	MOS	.70	Proofread reply brief [.4]; supervised filing of brief [.2]; corresponded with S. Bauman re same.	351.40
3/26/15	MOS	.70	Reviewed surreply filed by plaintiff [.4]; corresponded with J. Amunson re same [.2]; corresponded with S. Bauman re same [.1].	351.40
		97.10	PROFESSIONAL SERVICES	$47,965.60

DISBURSEMENTS

2/26/15	B&W Copy	20.24
2/26/15	UPS tracking# 1Z22124E0190817550 Inv# 0000022124E095	11.89
3/10/15	B&W Copy	8.03
3/17/15	B&W Copy	2.09
3/17/15	UPS tracking# 1Z22124E0190419383 Inv# 0000022124E125	11.60
	TOTAL DISBURSEMENTS	$53.85

INVOICE TOTAL $ 48,019.45

SUMMARY OF PROFESSIONAL SERVICES

NAME	HOURS	RATE	TOTAL
MICHAEL B. DESANCTIS	2.80	747.00	2,091.60
JESSICA RING AMUNSON	11.80	613.00	7,233.40
MICHELLE R. SINGER	72.30	502.00	36,294.60
CHERYL L. OLSON	10.20	230.00	2,346.00
TOTAL	97.10		$47,965.60

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiffs' Exhibit 65
Civ. No. 05-1437 (RCL)

ALEX YOUNG,	
PLAINTIFF	Civil Action No. 1:14-cv-1203 (BAH)
vs.	
RICHARD SARLES,	
DEFENDANT	

AFFIDAVIT OF ROBERT CORN-REVERE

1. I am an attorney admitted to practice before the District of Columbia Court of Appeals and this Court. This declaration is submitted in support of the attorneys' fees requested by counsel in this matter. I make this declaration from facts of which I have personal knowledge and, if I were called to testify to those facts, I could and would do so competently.

2. I graduated from The Catholic University of America, Columbus School of Law in 1983. I have been in private practice since 1983.

3. I am currently a Partner at the Washington, D.C. office of Davis, Wright, Tremaine, LLP, where I specialize in First Amendment law and communication.

4. Prior to my work at Davis, Wright, Tremaine, LLP, I was a Partner in the Washington, D.C. office of Hogan & Hartson, LLP from 1994-2003, and an associate at the Washington, D.C. office of Hogan & Hartson, LLP from 1985-1989. From 1983-1985, I was an associate at the Washington, D.C. office of Steptoe & Johnson, LLP.

5. I served as Adjunct Professor at The Catholic University of America, Columbus School of Law from 1987-2001.

6. I am currently the National Chairman of the First Amendment Lawyers

Association

7. My practice involves complex civil rights litigation, primarily in the area of First Amendment rights.

8. The following is a representative list of First Amendment cases in which I have served as lead counsel:

a. *Sanders v. Guzman* – Representing Blinn College student who was instructed by university official that she and her friends would need "special permission" to display political signs on campus and to remain within the college's "free speech zone" if she wanted to demonstrate. (W.D. Tex., Ongoing)

b. *Tomas v. Coley* – Representing student at California Polytechnic State University, Pomona who was stopped by campus police from handing out flyers without a "permit" outside the campus "free speech zone." (C.D. Cal.; Ongoing)

c. *Jergins v. Williams* – Representing students at Dixie State University in First Amendment challenge to unconstitutional enforcement of a "free speech zone" and to policies that impose prior restraints on students' speech. Students further allege that the university refused to approve promotional flyers produced by the Young Americans for Liberty (YAL) student group that featured images negatively portraying Presidents George W. Bush and Barack Obama, and Che Guevara because school policy does not permit students to "disparage" or "mock[] individuals." (D. Utah, Ongoing)

d. *Kalamazoo Peace Center v. Dunn* – Western Michigan University settled with non-profit student organization and its two co-directors in civil rights action against university administrators who demanded that the organization pay a hefty and arbitrary security fee before hosting rapper and social activist at annual event. In settlement, University adopted new policies to comply with the First Amendment and pay $35,000 in damages and attorneys' fees (W.D. Mich. 2015)

e. *Smith v. McDavis* – Ohio University settled with student after he and fellow student group members were ordered by administrators not to wear a t-shirt advertising their student defense service featuring the phrase "We get you off for free." In settlement, University adopted new policies to adopt a definition of harassment that complies with the First Amendment and paid student $32,000. (S.D Ohio 2015)

f. *Beverly v. Watson* – Representing two professors in action seeking relief from unconstitutional speech policies at Chicago State University and an order enjoining administrators from continuing efforts to shut down the professors' blog, which is often critical of the University's administration. Motion to dismiss denied, *Beverly v. Watson*, __ F.Supp.3d __, 2015 WL 170409 (N.D. Ill. Jan. 13, 2015) (N.D. Ill., Ongoing)

g. *Sinapi-Riddle v. Citrus Community College District* – Represented student who was threatened with removal from campus for asking a fellow student to sign a petition outside the College's restrictive "free speech area." Obtained $110,000 settlement under which College agreed to revise its policies to permit free expression in all open areas of campus and to adopt a definition of harassment that complies with the First Amendment. (C.D. Cal. 2014)

h. *Gerlich v. Leath* – Representing Iowa State University student members of the university chapter of the National Organization for the Reform of Marijuana Laws (NORML ISU) challenging the University adoption and enforcement of policies that unconstitutionally restrict the group's ability to engage in political advocacy through license of university trademarks for t-shirts and other apparel. Motion to dismiss denied. Gerlich v. Leath, 2015 WL 4097755 (S.D. Iowa Jan. 6, 2015) (S.D. Iowa, Ongoing)

i. *Burch v. University System of Hawaii*— Represented students in civil rights lawsuit claiming denial of their right to hand out literature, the unconstitutionality of the university's "free speech zone," and the failure of university officials to adequately train administrators on the rights of college students. Resulted in settlement under which the entire University of Hawaii system agreed to revise its policies to allow free speech in open areas across all campuses and to pay plaintiffs $50,000. (D. Haw. 2014)

j. *Van Tuinen v. Modesto Community College* – Represented student in civil rights lawsuit against community college district that prevented him from handing out copies of U.S. Constitution on Constitution Day, resulting in settlement under which the district agreed to revise its policies to allow free speech in open areas across campus and agreed to pay plaintiff $50,000. (E.D. Cal. 2014)

k. *Garcia v. Montgomery County et al.* – Representing photojournalist and video producer Mannie Garcia in a federal civil rights action against

Montgomery County, the Montgomery County Police Department, the Chief of Police, and individual police officers for falsely arresting Mr. Garcia and using excessive force while he filmed another arrest on a public street. (D. Md. Ongoing)

l. *Chamber of Commerce of the United States v. Servin, et al.* – Represented the Yes Men against trademark claims filed after they performed a political parody of the Chamber of Commerce's controversial position on global climate change; three years after defendants moved to dismiss, the Chamber dropped its lawsuit. USDC D.C. 09cv 2014 (2013)

m. *Barnes v. Zaccari* – Lead counsel in case holding that qualified immunity does not protect university president who summarily expelled students for exercising First Amendment rights in violation of procedural due process requirements. (11th Cir. 2012)

n. *United States v. Stevens* – Co-counsel for respondent in case challenging the constitutionality of a federal law prohibiting depictions of "animal cruelty." The Court ruled 8-1 that the law violates the First Amendment. (U.S. 2009)

o. *Berger v. City of Seattle* – Counsel for appellant in successful First Amendment challenge to restrictions on use of the public forum in the Seattle Center, a multipurpose cultural and entertainment venue. (9th Cir. 2009) (en banc)

p. *Huminski v. Corsones* – Counsel for plaintiff in a case holding that individual members of the public have a First Amendment right to attend court proceedings. (2d Cir. 2006)

q. *United States v. Playboy Entertainment Group, Inc.* (U.S. 2000). Lead counsel for Playboy in successful First Amendment challenge to Section 505 of the Telecommunications Act of 1996.

9. For First Amendment cases in which I have represented a prevailing Plaintiff in § 1983 litigation, I generally seek attorneys' fees, either through settlement or by petitioning the court. In preparing for settlement negotiations or filing a petition, I familiarize myself with the most recent prevailing market rates. To obtain relevant comparisons for billing rates, I obtain information concerning rates for attorneys in both larger law firms engaged in complex litigation, as well as smaller boutique civil rights law firms.

10. My current billing rate for First Amendment litigation is $690 per hour.

11. I understand that Plaintiff's attorneys are seeking fees based on the rates set forth in the LSI-adjusted Laffey Matrix.

12. I further understand that Attorney Light, who graduated from law school in 2004, is seeking the LSI-adjusted Laffey Matrix rate for an attorney who has been out of law school for 11-19 years. According to the LSI-adjusted Laffey Matrix, that rate is currently $661/hr, and was $655/hr last year, and $640/hr the year before.

13. The LSI-adjusted Laffey Matrix rates for Attorney Light are reasonable and consistent with the prevailing market rate in the Washington, D.C. area for First Amendment litigation.

14. I also understand that Attorneys Day and McKusick are seeking the LSI-adjusted Laffey Matrix rate for attorneys who have been out of law school for over 20 years. According to the LSI-adjusted Laffey Matrix, that rate is currently $796/hr, and was $789/hr last year, and $771/hr the year before.

15. The LSI-adjusted Laffey Matrix rates for Attorneys Day and McKusick are reasonable and consistent with the prevailing market rate in the Washington, D.C. area for First Amendment litigation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed August 11, 2015

Robert Corn-Revere, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DL, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Plaintiffs' Exhibit 66
Civ. No. 05-1437 (RCL)

Civil Action No. 05-1437 (RCL)

AFFIDAVIT OF ANTHONY T. PIERCE

I, Anthony T. Pierce, hereby depose and state:

1. I graduated from Georgetown University Law Center in 1987. Since then, my practice has involved complex federal and state litigation in the District of Columbia and other jurisdictions.

2. I am a partner at the law firm of Akin Gump Strauss Hauer & Feld LLP ("Akin Gump"). Akin Gump is an international law firm with over 900 attorneys. I am the partner in charge of Akin Gump's Washington, D.C. office, which has 256 attorneys. I am also a member of the firm's management committee.

3. I am familiar with the hourly rates that Akin Gump charges in Washington, D.C. and elsewhere. I am also familiar with the hourly rates that Akin Gump and other law firms in Washington, D.C. charge for complex federal litigation.

4. The *Laffey* Matrix is a schedule of hourly rates developed in *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part and rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *overruled in part on other grounds*, *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988)(*en banc*). *See e.g., Salazar v. D.C.*, 809 F.3d 58,

60, 64-65 (D.C. Cir. 2015). It is my understanding that plaintiffs' counsel in the above captioned case are requesting reimbursement for their work based on an update to the *Laffey* Matrix using the Legal Services Index (hereafter "LSI *Laffey* Matrix").

5. Plaintiffs' counsel have represented to me that the LSI *Laffey* Matrix rates for 2016-2017 are:

Years Out of Law School	Hourly Rate
20th+	$826
11th – 19th	$686
8th – 10th	$608
4th – 7th	$421
1st – 3rd	$342
Paralegal/Law Clerk	$187

6. In my opinion, the hourly rates in the LSI *Laffey* Matrix are comparable to, if not below, the market rates for complex federal litigation in Washington, D.C.

7. Howard B. Jacobson is a partner at Akin Gump's Washington office. His standard hourly rate is not $410. His standard hourly rate is higher than the top rate in the LSI *Laffey* Matrix.

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true.

Date: September 26, 2016

ANTHONY T. PIERCE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DL, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Plaintiffs' Exhibit 67
Civ. No. 05-1437 (RCL)

Civil Action No. 05-1437 (RCL)

AFFIDAVIT OF NATHAN LEWIN

I, Nathan Lewin, hereby depose and state:

1. I am a 1960 graduate of Harvard Law School. Following law school, I served as a law clerk to Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit (1960-1961) and then to Associate Justice John M. Harlan of the Supreme Court of the United States (1961-1962). Thereafter, I served as an Assistant to the Solicitor General in the Department of Justice under Solicitors General Archibald Cox and Thurgood Marshall. I also served as Deputy Assistant Attorney General in the Civil Rights Division of the Department of Justice and as Deputy Administrator of the Bureau of Security and Consular Affairs at the Department of State.

2. Upon leaving government service in 1969, I became a founding partner of Miller, Cassidy, Larroca and Lewin ("Miller Cassidy"), which was one of the nation's foremost litigation "boutiques" for more than 30 years. In January 2001, when Miller Cassidy merged with the Washington office of Baker Botts, LLP, I did not participate in the merger. For a brief period, I joined the Washington office of Mintz Levin Cohn Ferris Glovsky and Popeo, PC. In

May 2002, I formed Lewin & Lewin, LLP, in Washington, D.C. Lewin & Lewin, LLP, engages in complex federal litigation.

3. Throughout my career, I have engaged in complex federal litigation in the Washington, D.C., legal marketplace and in many other jurisdictions around the country. I am familiar with the marketplace for complex federal litigation in Washington, D.C. and other jurisdictions.

4. Miller Cassidy was one of the firms whose rates information was included in the fee matrix created to support the 1983 fee application in *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), *rev'd*, 746 F.2d 4 (D.C. Cir. 1984), *overruled on other grounds*, *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). That matrix has come to be known as the "*Laffey* matrix." As can be seen, my hourly rate of $250 is among the highest rates in the data underlying the *Laffey* matrix. Only partners at Caplin & Drysdale had a higher rate ($300) and senior partners at Dickstein, Shapiro & Morin also had a rate of $250. By comparison, Daniel A. Rezneck, then of Arnold & Porter, who compiled the data and created the *Laffey* matrix, had an hourly rate of $200.

5. In *Heller v. District of Columbia*, No. 03-213,2011 WL 6826278 at *9 (D.D.C. Dec. 29, 2011), appeals docketed, Nos. 12-7021, 12-7022 (D.C. Cir. Feb. 23, 2012), the court assumes from the Malowane Declaration that the hourly rates of large firms engaged in complex federal litigation are higher than those of small or boutique firms engaged in such practice. Based on my knowledge of the marketplace, this is not the case. The rates of all firms in the complex federal litigation marketplace are comparable. It is my experience that law firms, like other businesses, must respond to the whole market, not just a segment.

6. Throughout my tenure at Miller Cassidy, the firm viewed all firms engaged in complex federal litigation in Washington, D.C., as its competitors in that marketplace. This includes both other boutique firms and large firms. In no way did Miller Cassidy consider itself to be in competition with only small or boutique firms. In order to be competitive in the marketplace for complex federal litigation, Miller Cassidy set its hourly rates in a manner that included consideration of our competitors' rates, regardless of size of the competitor.

7. The overhead of Miller Cassidy was of little or no consideration in the setting of hourly rates.

8. In 2001, when I left Miller Cassidy, my hourly rate for complex federal litigation was $500. When I started Lewin & Lewin, LLP, I adjusted my Miller Cassidy rate upward to $550 to reflect a general increase in rates.

9. Lewin & Lewin, LLP, views all firms engaged in complex federal litigation in Washington, D.C., as its competitors in that marketplace. This includes other boutique firms and large firms. Lewin & Lewin, LLP, does not consider itself to be in competition with only small or boutique firms. In order to be competitive in the marketplace for complex federal litigation, Lewin & Lewin, LLP, sets its competitive hourly rates regardless of the size of the competitor.

10. The overhead of Lewin & Lewin, LLP, is of little or no consideration in the setting of hourly rates.

11. In the *Heller* case, the Malowane Declaration assumed that smaller firms had lower overhead than large firms. Based on my experience at Miller Cassidy, a 35-attorney firm, and at Lewin & Lewin, LLP, a 2-attorney firm, the smaller the firm the greater the overhead on a per-attorney basis.

12. Today, my hourly rate for complex federal litigation is $ 750.00.

13. Except for cases in which my hourly rate was adjusted to reflect the fact that the litigation was undertaken on a partial *pro bono* basis, the firms with which I have been associated charged the same hourly rate for all work performed by me on a matter. The hourly rate did not change to reflect the simplicity or complexity of the particular task involved.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true.

s/Nathan Lewin

Date: September 13, 2016

NATHAN LEWIN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DL, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Plaintiffs' Exhibit 68
Civ. No. 05-1437 (RCL)

Civil Action No. 05-1437 (RCL)

AFFIDAVIT OF BARRY COBURN

I, Barry Coburn, hereby depose and state:

1. I graduated from Harvard Law School in 1981. I am a member in good standing of the Bar of the District of Columbia. I am admitted to several federal district courts and courts of appeal.

2. I have over twenty-five years of experience litigating complex civil and criminal cases in the federal courts. Following law school, I served as a Special Assistant to the Director of Operations in the United States Department of Justice Antitrust Division from 1981 to 1985. After that, I served in the United States Attorney's Office for the District of Columbia from 1985 to 1990.

3. For the last twenty-six years, I have worked in private practice. I have practiced almost exclusively at small litigation firms, focusing on what is typically referenced as "white collar" and other criminal defense cases as well as civil and administrative litigation. I have tried a large number of cases in federal and state/local courts.

4. I currently practice at Coburn & Greenbaum, PLLC, which is based in Washington, D.C. Coburn & Greenbaum has seven attorneys, including myself. Coburn &

Greenbaum engages in complex federal litigation in Washington, D.C. and in other jurisdictions around the country.

5. My current hourly rate for complex federal litigation is $700.00.

6. My hourly rate for complex federal litigation is based on the market for complex federal litigation in the District of Columbia.

7. Litigation matters that are not complex typically command a lower hourly rate in the marketplace. I base my hourly rate for non-complex litigation on this marketplace.

8. Coburn & Greenbaum competes with all firms, large and small, that are engaged in complex federal litigation in Washington, D.C. In order to be competitive in the marketplace for complex federal litigation, Coburn & Greenbaum sets its hourly rates for complex federal litigation in a manner that includes consideration of our competitors' rates, regardless of firm size.

9. Coburn & Greenbaum has litigated cases in jurisdictions across the country. When we litigate cases in the District Court for the District of Columbia, it is not uncommon for co-counsel or opposing counsel to be from firms that are based in cities outside of the District of Columbia. Conversely, when we litigate cases in other jurisdictions, it is not uncommon for co-counsel or opposing counsel to be from firms that are based in Washington, D.C.

10. The overhead of Coburn & Greenbaum is of little or no consideration in the setting of my hourly rate for complex federal litigation.

11. I have been asked by Terris Pravlik & Millian, LLP ("TPM") to provide my opinion on the reasonableness of the hourly rates that they are seeking in the present case. In order to do so, I have reviewed background information on the experience of the attorneys primarily involved in this litigation.

12. I understand that Bruce Terris and Todd Gluckman of TPM are the current lead attorneys who tried this case. Mr. Terris is a 1957 graduate of Harvard Law School, *magna cum laude*. He has practiced law for over fifty years, including seven years in the Office of the Solicitor General, where he drafted or edited approximately seventy briefs on the merits in the Supreme Court. He has extensive experience arguing before the Supreme Court.

13. Mr. Gluckman is a 2005 graduate of Cornell Law School, *cum laude*. He is a former clerk of the Honorable Frederick J. Martone of the United States District Court for the District of Arizona and was an associate with White & Case LLP.

14. This case appears to have a long history, having been pending for over eleven years. It is reasonable for multiple attorneys to have worked on a case of such duration and complexity, and my understanding is that there have been numerous other attorneys that have worked on this case in addition to Mr. Terris and Mr. Gluckman. I have reviewed the backgrounds of the several other attorneys who have worked on this case, including the following: Shina Majeed, a 2000 graduate of New York University School of Law, *cum laude*, Alexander R. Karam, a 2004 graduate of Columbia University School of Law, Ehsan Tabesh, a 2010 graduate of the University of Virginia School of Law, Jane Liu, a 2005 graduate of the University of Pennsylvania School of Law, and Lauren Seffel, a 2010 graduate of Harvard Law School. In addition to these attorneys for TPM, I understand that there are co-counsel who are seeking fees: Jeffrey S. Gutman, a 1986 graduate of Harvard Law School and Professor of Clinical Law at the George Washington University School of Law, Margaret Kohn, a 1972 graduate of the Columbia University School of Law, and Cyrus Mehri, a 1988 graduate of Cornell Law School at Mehri & Skalet, PLLC.

15. Based on my review, each of these attorneys possesses impressive credentials and professional experience in the area of complex federal litigation. Based on my experience and knowledge regarding billing rates at my firm as well as those of other firms engaged in equally complex litigation, it is my opinion that the rates sought by TPM are reasonable. The rates sought are equivalent to the prevailing market rates in the District of Columbia, regardless of firm size.

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true.

Date: September 26, 2016

BARRY COBURN

EXHIBIT 1

BLACKMAN/JONES SIXTH POST CONSENT DECREE FEE PETITION

Summary of Attorney Fees

January 1, 2014 - November 20, 2014

Bazelon Center

Name	Hours	*Laffey* Rate	*Laffey* Lodestar
Ira Burnim (1977)	1.9	$520.00	$988.00
Lewis Bossing (1999)	298.9	$460.00	$137,494.00
Emily Read (2004)	2.3	$370.00	$862.10
Julia Graff (2005)	32.5	$370.00	$12,025.00
Total	**335.6**		**$151,369.10**

Steptoe & Johnson

Name	Hours	*Laffey* Rate	*Laffey* Lodestar
Jane Ryan (1982)	16.3	$520.00	$8,476.00
Lindsey Lang (1982)	31.7	$520.00	$16,484.00
Latoya Brisbane (2010)	34.7	$300.00	$10,410.00
Matthew Mazgaj (2012)	89.3	$255.00	$22,771.50
Total	**172.0**		**$35,370.00**

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Nikita Petties, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 95-0148 (PLF)
	)	
The District of Columbia, *et al.*,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND COSTS

Pursuant to 42 U.S.C. §1988, 20 U.S.C. §1400, *et seq*., §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, 28 U.S.C. §§1331 and 1361, and this Court's Orders, plaintiffs, Nikita Petties, *et al*., hereby request an award of reasonable attorneys' fees and costs in the amount of $156,969.53 in monitoring and seeking to enforce Defendants' compliance with the Court's Orders in this matter during the period of December 1, 2007, through February 29, 2008.

In support of their motion, Plaintiffs rely on the accompanying Memorandum of Points and Authorities. A proposed order is filed herewith.

Respectfully submitted,

S/ Bradford P. Johnson, No. 385757
Johnson Law Group Intl PLLC
1321 Pennsylvania Ave., S.E.
Washington, D.C. 20003
Phone: 202/544-1515
Fax: 202/544-1539

Steven Ney, No. 266163
Robin Thorner, No. 485492
Patrick Wojahn, No. 483705
University Legal Services
220 I St., N.E. Suite 130
Washington, D.C. 20002
Phone: 202/547-0198
Fax: 202/547-2662

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2009, a copy of the foregoing Plaintiffs' Motion for Attorneys Fees and Costs, with accompanying Memorandum of Points and Authorities and proposed order, was delivered by electronic mail to:

Robert Utiger, Esq.
District of Columbia Office of the Attorney General
441 Fourth St., NW
Sixth Floor South
Washington, D.C. 20001

S/ Bradford P. Johnson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Nikita Petties, *et al.,*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 95-0148 (PLF)
	)	
The District of Columbia, *et al.,*	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiffs, Nikita Petties, *et al*., by and through counsel, submit this Memorandum in support of their Motion for Attorneys' Fees and Costs in the above-captioned matter, covering the period from December 1, 2007, through February 29, 2008. For the reasons stated herein, Plaintiffs respectfully request that the Court award to them attorneys' fees and costs in the total amount of $156,969.53 pursuant to 40 U.S.C. §1988, 20 U.S.C. §§1400, *et seq*., and its implementing regulations, §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulations, 28 U.S.C. §§1331 and 1361, and this Court's Orders.

During the period for which this claim is submitted, the undersigned counsel continued to: meet regularly with Defendants and the Special Master; receive, document and follow up on payment and transportation complaints from class members, attorneys, advocates, and private schools and providers representing or working with class members; monitor and seek to enforce Defendants' compliance with the Court's operative Orders in this matter; work extensively with the Transportation Administrator brought in pursuant to Consent Orders requested by the parties on issues related to the improvement of daily services to class members as well as long-term reform of the Division of Transportation; and work with Defendants and the Special Master on

the process for tracking services missed as a result of transportation failures and ensuring the provision of appropriate compensatory education services to affected students. Plaintiffs' counsel also were required to devote substantial time to analysis of Defendants' monthly payment reports, including significant efforts devoted to independent investigation, identification and resolution of specific payment problems and disputes through communications with special education providers and the Office of the Special Master. During the current period, there was significant negotiation between the parties to develop and agree on an exit strategy on the transportation portion of the case. Numerous meetings were convened by the Transportation Administrator, which resulted in a detailed reporting and comment mechanism that allowed the parties to negotiate the operational details of the component parts of transporting children with special needs in the District of Columbia. While these meetings ultimately did not result in a negotiated settlement of the overall transportation portion of *Petties*, it did provide a forum for identifying and discussing the issues that currently prevent Defendants from taking control of the transportation system.

The period for which this claim is submitted covers the quarter following an extended dispute over Defendants' willingness to reimburse Plaintiffs for reasonable attorneys' fees incurred during the March 2005, to November 2007, period – a motion for which was filed in May of 2008. The Court ruled in favor of Plaintiffs for this period on October 20, 2009. While the issues were being litigated, Plaintiffs refrained from filing further motions for attorneys' fee out of courtesy to the Court. *See* Exhibit A, Notice to the Court, August 1, 2008. Under these circumstances, and consistent with the Court's October 20, 2009 Order, Plaintiffs submit this claim using the 2009-10 *Laffey* rates.

Plaintiffs also note that Defendants have argued, since January 29, 2008, that issues related to the establishment of residency by members of the plaintiff class fall outside the scope of *Petties,* and that Defendants, accordingly, should not be required to reimburse Plaintiffs for fees associated with residency-related activities. Without conceding the issue, and as noted in the billing materials attached hereto, plaintiffs have not charged for entries made after January 29, 2008 that refer to "residency."

I. Factual and Procedural Background

On January 25, 1995, Plaintiffs, Nikita Petties, *et al*., brought this class action pursuant to the Civil Rights Act, 42 U.S.C. §1983, alleging systemic violations of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. §§1400, *et seq*., and its implementing regulations, §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulations, 28 U.S.C. §§1331 and 1361 and the law of this Court. The plaintiff class includes all District of Columbia students with disabilities who receive some or all of their special education and related services (including transportation) from private providers because the District of Columbia is unable to provide, or has failed to provide, appropriate services to meet their individual needs within its own system. All of the affected students are entitled to special education and/or related services pursuant to the IDEA and/or the Rehabilitation Act.

In their complaint for declaratory, injunctive and other relief, Plaintiffs alleged that Defendants, the District of Columbia, *et al*., consistently failed to render full and timely payments for Plaintiffs' private special education placements and services. Plaintiffs maintained that they had suffered, and would continue to suffer, irreparable harm if Defendants continued their pattern and practice of late and/or incomplete payments for private special education placements and related services. Accordingly, Plaintiffs sought a preliminary injunction

requiring Defendants to pay all outstanding costs of private special education placements and services, requiring Defendants to give written assurances satisfactory to the Court that such payments would be made on a full and current basis thereafter, according to the payment requirements of each provider, and requiring Defendants to report to the Court on a regular basis regarding their compliance with the Court's Order. On March 17, 1995, a hearing was held and this Court granted Plaintiffs' motions for class certification and preliminary injunction.

Subsequently, Plaintiffs succeeded in obtaining Orders modifying the Class definition and the Preliminary Injunction, specifically to include students whose private special education placements and/or services are funded by the D.C. Department of Human Services ("DHS"), as well as Orders delineating the requirements for Defendants' compliance and the monitoring responsibilities of Plaintiffs in this matter. Additionally, pursuant to Plaintiffs' motions, this Court has held Defendants in contempt of its Orders on several occasions, imposed substantial fines on Defendants that continue to accrue, and ordered other declaratory and injunctive relief.

Plaintiffs also succeeded in obtaining Orders creating and implementing an automated payment system to address Defendants" chronic failure to pay private schools and providers on a full and timely basis, as well as Orders requiring Defendants to take specific steps to resolve inter-agency disputes affecting the security of class members' placements and services, requiring Defendants to correct significant, systemic deficiencies in the provision of transportation services to class members, and requiring DCPS to identify class members served through the office of the *LaShawn* Receiver, monitor the provision of the placements and services to which they are entitled and ensure the maintenance of those placements and services, including the provision of safe and appropriate transportation.

With respect to class members' special education transportation services, Plaintiffs' counsel negotiated and obtained entry of an Order implementing a comprehensive Special Education Transportation Corrective Action Plan, as well as several other orders protecting class members' transportation rights, including the Court's July 8, 1997 Order appointing a Special Master to assist the parties and the Court in resolving transportation issues. Plaintiffs' counsel also negotiated and obtained entry of an Order (June 25, 2003) appointing a Transportation Administrator. Plaintiffs' counsel also litigated successfully in both this Court and in the U.S. Court of Appeals for the D.C. Circuit to help affirm the Transportation Administrator's authority to make key decisions regarding transportation of special education students in the District of Columbia, including the Administrator's ability to negotiate collective bargaining agreements with the unions representing the bus drivers and attendants. This helped ensure that students would continue to be transported in a timely manner to and from their schools.

The Special Master's authority has been expanded to include resolution of specific payment disputes between Defendants and private special education service providers. Plaintiffs' counsel has succeeded in obtaining the entry of several payment-related Orders by the Court, including the currently operative Order of August 5, 2009, as well as numerous Orders for payment to specific private providers pursuant to the dispute process negotiated by the parties and incorporated into the payment orders.

Defendants are under continuing orders to make timely and complete payments to private providers and to make adequate progress towards fulfilling the transportation objectives encompassed in the Court's directives and orders. During the period covered by this motion, Plaintiffs' counsel continued to work intensively with Defendants, their counsel, and the Special Master in efforts to ensure that safe and appropriate transportation services are provided to

students with disabilities as required pursuant to this Court's Orders. Plaintiffs' counsel also devoted considerable effort to monitoring payments and attempting to resolve persistent payment problems through Defendants' counsel and, where necessary, through the office of the Special Master and this Court.

Plaintiffs' counsel have continued to monitor Defendants' compliance with all of the operative Orders in this case and have sought to obtain Defendants' compliance informally in all instances prior to seeking further intervention of the Court. In summary, Plaintiffs' counsel's efforts have focused on two major tracks: 1) ongoing efforts to resolve the systemic dysfunction and bring sustained improvement in the delivery of transportation services to students, including troubleshooting for class members and crisis intervention as needed in the absence of a properly functioning monitoring unit within DCPS, and now OSSE, and/or comprehensive independent monitoring and reporting of DCPS' and OSSE's performance; and 2) analysis, investigation and follow-up with respect to Defendants' receipt, processing and payment of invoices for private special education services rendered to class members. Timely payment to private special education providers continues to rely on ongoing vigilance and advocacy on the part of Plaintiffs' counsel.

Plaintiffs now seek an award of reasonable attorneys' fees and costs incurred for the period from December 1, 2007, through February 29, 2008, in monitoring and seeking enforcement of the Court's Orders to protect and secure the rights of the class as described above.

II. Plaintiffs Are Entitled to Recover Fees and Costs

Plaintiffs are specifically entitled to recover fees and costs incurred for monitoring Defendants' compliance pursuant to this Court's Order of June 29, 1995, which authorizes

interim fees petitions for such activities, as well as subsequent Orders of the Court in this matter. Further, Plaintiffs are entitled to recover fees and costs pursuant to the Civil Rights Act, 42 U.S.C. §1983 (under the Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988), for systemic violations of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. §§1400, *et seq.*, and its implementing regulations, §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulations, 28 U.S.C. §§1331 and 1361, as supported by the law of this Court. *Petties v. District of Columbia*, 55 F. Supp. 2d 17 (D.D.C. 1999), *appeal dismissed*, 1999 WL 1336123 (D.C. Cir. Dec. 28, 1999), *appeal dismissed*, 227 F.3d 469, 2000 WL 1399662 (D.C. Cir. Oct. 6, 2000); *see also*, Order of May 14, 1999, *Calloway v. District of Columbia*, Civil Action No. 99-0037 (D.D.C.) *aff'd*, 216 F.3d 1 (D.C. Cir 2000); Order of May 10, 2001, *Blackman v. D.C. et al.*, Civil Action No. 97-1629 (D.D.C.); Order of March 11, 2008, *Petties v. District of Columbia*, Civil Action No. 95-0148 (D.D.C.).

Pursuant to the Court's June 29, 1995 Order, Plaintiffs are entitled to submit quarterly fees claims in this matter. Defendants may file an opposition within fourteen (14) calendar days, and Plaintiffs' counsel may file a reply within five (5) calendar days of the filing of Defendants' opposition. The fees and costs approved by the Court are to be paid by Defendants within thirty (30) calendar days of the Court's approval. *See* June 29, 1995 Order.

Plaintiffs respectfully submit that the fees and costs sought herein are appropriate and reasonable, and that the hours expended by Plaintiffs' counsel were necessary and productive in fulfilling their monitoring and enforcement functions in this matter. *See* Exhibit B, ULS/P&A's itemized statements of the fees and costs incurred in this action from December 1, 2007 to February 29, 2008; and Exhibit C, Johnson Law Group's itemized fees and costs incurred in this action during the same period of time.

A. Attorneys' Hourly Rates Are Within Allowable Market Rates

Plaintiffs respectfully submit that the rates charged by Plaintiffs' counsel are reasonable and within the market rate for similar work in this community. *See Bailey v. D.C.*, 839 F. Supp. 888 (D.D.C. 1993). Additionally, the rates charged herein are consistent with the rates approved in the *Laffey* case and used as the scale for payments of fees and costs by the U.S. Attorney's Office in civil rights matters in the District of Columbia. *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *rev'd on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985).

Plaintiffs' counsel has extensive experience in the representation of children with disabilities and their parents in matters related to their special education rights. Bradford P. Johnson is the head of his law firm and has represented students with special education needs for 25 years, beginning with clinical education experience in law school (1981-1984) and continuing to the present. Since the death of Beth Goodman, Mr. Johnson has served as co-counsel in this case together with colleagues at University Legal Services, the Protection and Advocacy Program for Individuals with Disabilities in the District of Columbia. Mr. Johnson has been an active member of the D.C. Bar since 1985, and is a member in good standing of this Court. Mr. Johnson's time is billed at the rate of $465 per hour, which is consistent with the rate allowed under *Laffey*.

Steven Ney, lead counsel for University Legal Services, is a member in good standing of the D.C. and Maryland Bars and the Bar of this Court, and has 32 years of professional legal experience. His practice has been devoted to public interest law and he currently serves as Of Counsel to University Legal Services. Mr. Ney is the former Legal Director of the Maryland Disability Law Center, the federally designated protection and advocacy program for people with

disabilities in the State of Maryland. He also is a former Visiting Professor of Law at the University of Baltimore School of Law where he taught Constitutional Law, and is currently Adjunct Professor of Law at the University of Baltimore School of Law, where he teaches Trial Advocacy. Mr. Ney's time is billed at the rate of $465 per hour, which is consistent with the rate allowed under *Laffey*.

Robin Thorner, is a Managing Attorney at ULS and bills at $330 an hour, which is consistent with the rate allowed under *Laffey*. Ms. Thorner has been practicing law for ten (10) years, and has litigated cases in federal court involving institutional conditions, special education, and the rights of children with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. She received her B.A. from Yale University in 1995, graduating *magna cum laude*. She then graduated from New York University School of Law in 1999, clerked for the Honorable Deborah G. Hankinson, Supreme Court of Texas, and received an Equal Justice Works Fellowship in 2000, representing children with special needs. Prior to joining ULS, she worked at South Brooklyn Legal Services. She is admitted to practice in the District of Columbia and New York State, and is a member in good standing in this Court.

Patrick Wojahn is a Staff Attorney at University Legal Services, where he has been representing individuals with disabilities since 2005. Mr. Wojahn has been practicing law for seven (7) years, and has litigated cases in federal court involving institutional conditions and special education. He received his B.A. from the University of Washington-Madison in 1998, graduating with honors. He then graduated *cum laude* from Georgetown Law Center in 2002, clerked for the Honorable John Campbell, District of Columbia Superior Court, and received a Skadden Fellowship in 2003, representing individuals living with HIV/AIDS. Mr. Wojahn is admitted to practice in the District of Columbia and Maryland State, and is a member in good

standing in this Court. Mr. Wojahn's time is billed at the rate of $270 per hour, which is consistent with the rate allowed under *Laffey*.

Sharonda Mann and Jackie Parker are billed herein pursuant to *Laffey* rates for paralegal support.

Plaintiffs further submit that the hours expended by Plaintiffs' counsel in this action were necessary and reasonable and were utilized effectively and efficiently. Plaintiffs have taken steps to document each entry accurately and in sufficient detail to convey to the Court and to Defendants the nature and extent of each activity. To further assist in this regard, Plaintiffs have compiled and attach Exhibit D to this motion, which is a list of abbreviations used in the time entries. In addition to exercising careful billing judgment with respect to this claim, Plaintiffs' counsel have reduced numerous time charges prior to the generation of final statements, and have excluded charges for certain billable activities that required only small amounts of time. In order to further reduce costs, and as demonstrated in Exhibits B and C, Plaintiffs identified significant tasks that were not charged to the Defendants; this resulted in a monetary savings of $14,299.00 for the period in question, representing 13.7 percent of labor hours and 9.1 percent of the overall dollar amount. Finally, Plaintiffs' counsel have refrained from billing numerous costs involved in their representation of the class, including many duplication, facsimile, mailing, parking and travel expenses, although Plaintiffs' counsel reserves the right to bill such costs in full in future claims.

III. Conclusion

For the reasons stated herein, Plaintiffs respectfully request that the Court award attorneys' fees and costs in the total amount of $156,969.53 pursuant to 40 U.S.C §1988, 20 U.S.C. §§1400, *et seq*., and its implementing regulations, §504 of the Rehabilitation Act of 1973,

29 U.S.C. §794, and its implementing regulations, 28 U.S.C. §§1331 and 1361, this Court's Orders in *Petties* and other controlling law in this jurisdiction.

Respectfully Submitted,

S/ Bradford P. Johnson, No. 385757
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1321 Pennsylvania Ave., S.E.
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Phone: 202/544-1515
Fax: 202/544-1539

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Washington, D.C. 20002
Phone: 202/547-0198
Fax: 202/547-2662

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Nikita Petties, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 95-0148 (PLF)
	)	
The District of Columbia, *et al.*,	)	
	)	
Defendants.	)	
	)	

NOTICE TO THE COURT

On May 13, 2008, Plaintiffs filed a motion for interim attorneys' fees and costs for the period March 2005 through November 2007. Defendants opposed the motion and the matter is fully briefed before the Court. Defendants' opposition included an argument — disputed by Plaintiffs — that Plaintiffs delayed submission of their quarterly fee claims.

Plaintiffs are prepared to file claims for the quarterly periods subsequent to November 2007, but, in the interest of judicial economy will not file such claims pending resolution of the March 2005 to November 2007 claim, unless otherwise directed by the Court,.

Respectfully submitted,

S/ Bradford P. Johnson, No. 385757
Johnson Law Group Intl PLLC
1321 Pennsylvania Ave., S.E.
Washington, D.C. 20003
Phone: 202/544-1515
Fax: 202/544-1539

Steven Ney, No. 266163
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Washington, D.C. 20002
Phone: 202/547-0198
Fax: 202/547-2662

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2008 a copy of the foregoing Notice was delivered by electronic mail to:

Robert Utiger, Esq.
District of Columbia Office of the Attorney General
441 Fourth St., NW
Sixth Floor South
Washington, D.C. 20001

S/ Bradford P. Johnson

EXHIBIT 3

LASHAWN A. BY EVELYN MOORE, *ET AL.*, :

v. : D.D.C. Civ. No. 89-1754
D.C. Cir. No. 00-7122

ANTHONY B. WILLIAMS, *ET AL.* :

ATTORNEYS' FEES SETTLEMENT AGREEMENT

The parties to this litigation, acting through their counsel who are duly authorized to make this agreement on their behalf, hereby agree as follows:

1. Within two working days of execution of this agreement, the parties will jointly move in the United States Court of Appeals for the District of Columbia Circuit to remand appeal No. 00-7122 to the District Court for entry of a modified partial final judgment.

2. Within five working days of entry of the Court of Appeals remand order, the parties will jointly move in the District Court for a Modified Partial Final Judgment for $1,750,000 (one million seven-hundred-fifty thousand dollars) in place of the judgment entered in D.D.C. Civ. No. 89-1754 on April 6, 2000.

3. The District of Columbia will pay plaintiffs $1,750,000 (one million seven-hundred-fifty thousand dollars) in accordance with the Modified Partial Final Judgment within thirty days of execution of this agreement, such payment to be regarded as full and complete satisfaction of all attorneys' fees and costs accrued by plaintiffs in this litigation through and including March 2, 2000. If the District of Columbia does not make the payment within thirty days of execution of this agreement, interest at the statutory rate specified by 28 U.S.C. § 1961 will begin to run as of the thirtieth day, whether or not the District Court has entered the Modified Partial Final Judgment as of that date.

The parties recognize that the District of Columbia may be prevented from making timely payment of the sum due under this paragraph by the unavailability of appropriated funds due to circumstances beyond its control. Such unavailability shall not diminish the obligation of the District to make such payment when funds are available and to pay interest at the statutory rate for the period of delay. In any action brought by plaintiffs to make such payment, the District will acknowledge its obligation to make such payment when funds become available.

4. All attorneys' fees and costs in D.D.C. Civ. No. 89-1754 accruing after March 2, 2000, shall be governed by the following provisions:

A. Plaintiffs shall henceforth file and serve itemized applications for fees and costs approximately every six months. The application for the period from March 3, 2000, to and including September 30, 2000 (or any later date), shall be filed and served on trial counsel for the District of Columbia within seventy-five days of execution of this agreement.

B. Fees will be calculated using the *Laffey* matrix in effect at the time of service of plaintiffs' fee application except (*i*) that the fees for Marcia Lowry will be paid

at a rate ten per cent higher than the applicable *Laffey* matrix rate and (*ii*) fees for time spent in travel shall be at 50% of the otherwise applicable rate.

C. The District of Columbia will have forty-five days without extension from the time of service of each fee application to file objections in the District Court that the hours spent are inaccurate, unreasonable, or redundant. In objecting to a particular fee application, the District of Columbia may argue to the District Court that, in determining whether the hours spent were "unreasonable," the court should consider the degree to which a request for relief was unsuccessful; plaintiffs may argue that this is not an appropriate consideration. No other grounds for objection may be raised. The District of Columbia is foreclosed from objecting that fees are not payable because (*i*) the Modified Final Order entered by the District Court in January 1994 is not based on federal law or the Constitution; (*ii*) that the work performed benefits members of the *LaShawn* class who are not in the custody of the District of Columbia; or (*iii*) that the work performed is for monitoring.

D. Regardless of whether the District of Columbia files timely objection to a fee application, it will nevertheless pay all undisputed fees and costs within seventy-five days of service of the application together with interest at the statutory rate specified by 28 U.S.C. § 1961, calculated from the forty-fifth day following service of the application.

E. The District of Columbia will pay all disputed fees and costs awarded by the District Court within thirty days of entry of an order awarding fees (or, if an appeal is filed, within thirty days of final disposition of the appeal), together with interest at the statutory rate specified by 28 U.S.C. § 1961, calculated from the day of the District Court judgment on fees.

F. If an appeal is filed, neither party will file dispositive motions, move for extensions of time, or otherwise act to delay disposition of the appeal.

5. This agreement shall be enforceable in the District Court, except that paragraph 4.F. shall be enforceable in the United States Court of Appeals.

MARCIA ROBINSON LOWRY
ERIC THOMPSON

ROBERT R. RIGSBY
Corporation Counsel
CHARLES L. REISCHEL
Deputy Corporation Counsel
Appellate Division
LUTZ ALEXANDER PRAGER
Assistant Deputy Corporation Counsel

Children's Rights, Inc.
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Counsel for Plaintiffs

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Tel.: (202) 727-6252 or 724-5667

Counsel for Defendants

November 22, 2000

EXHIBIT 4

CENTER FOR PUBLIC REPRESENTATION
22 Green Street, Northampton, MA 01060
Voice & TTY 413-586-6024 Fax 413-586-5711
www.centerforpublicrep.org

Matthew Belcher, Equity Section
Office of the Attorney General
Public Interest Division
Judiciary Square
441 Fourth Street, NW, Suite 900 South
Washington, DC 20001

Ellen Efros, Deputy Attorney General
Office of the Attorney General
Public Interest Division
Judiciary Square
441 Fourth Street, NW, Suite 900 South
Washington, DC 20001

November 7, 2013

Dear Ellen and Matthew:

Enclosed please find the plaintiffs' time and expenses for the 12-month period from May 16, 2011 through May 15, 2012. The requested amount, $458,093.31 falls well below the agreed-upon stipulation that caps attorney's fees and costs at $500,000 a year, absent active litigation. I am hopeful that we can maintain our established practice of resolving fees and costs without litigation.

Toward that end, we have included in this mailing a detailed listing of attorneys' fees and costs during the relevant time period. The listing represents the work performed by one attorney and one paralegal at the Center for Public Representation (CPR), one attorney and one nurse consultant at University Legal Services (ULS), and two attorneys at Holland and Knight (H&K). To facilitate your review, we have enclosed summary charts that note the time spent and the expenses incurred by the three firms. The Summary of Fees chart sets forth the total amount of time each lawyer and each firm worked and the reimbursement that each is seeking. The Summary of Costs chart delineates the costs each firm incurred and the amount that each is seeking to be reimbursed.

This was an exceptionally busy and productive 12-month period. During the time in question, the parties deliberated about the Medicaid waiver, the termination of long-time provider IDI, the joint monitoring protocol and the compliance certification process, while simultaneously focusing on adaptive equipment issues and class members whose

circumstances warranted heightened attention through the *Evans* 17 meetings, chaired by the Independent Compliance Administrator, Kathy Sawyer. Many of these issues were successfully addressed; others are ongoing. We believe that these all are significant matters that fall squarely within the rubric of compensable activities.

In keeping with past practice, we have made voluntary reductions in all aspects of this fee request in order to facilitate a settlement. This submission, as well as all subsequent discussions concerning the fee request, are made in a spirit of compromise and are subject to Fed. R. Ev. 408.

I. TIME

In order to avoid duplication and over-lawyering, virtually all the work during this period was done by the Center for Public Representation and University Legal Services. Holland & Knight attorneys billed for less than three-and-a-half hours over the 12-month period.

The majority of the work was performed by two attorneys (Cathy Costanzo and Sandra Bernstein), an experienced paralegal (Marcia Boundy), and a nurse consultant (Andrea Procaccino). ULS did not bill for their nurse consultant's time when both she and their attorney attended a meeting or participated in a conference call.[1] In total, CPR and ULS have not charged for 64.3 hours in this fee submission. This division of responsibility and assignments was designed to ensure efficiency and reasonable billing practices.

II. RATES

Consistent with the Supreme Court's holding in *Blum v. Stenson*, 465 U.S. 886 (1984), the plaintiffs are entitled to fees that reflect the current market rates of their attorneys. Holland & Knight's rates are considerably higher than their rates under the *Laffey* Matrix, established by the U.S. Attorney's Office. In the spirit of compromise and recognizing that the firm has a strong commitment to *pro bono* work, the attorneys at Holland and Knight voluntarily have reduced their rates to the *Laffey* rates, consistent with their past practice in this case. CPR and ULS attorneys are also seeking payment in accord with the *Laffey* rates, consistent with recent decisions in the District.

III. COSTS

The costs associated with this request are minimal. We have deleted any item that is not compensable under Circuit Court precedents. We have included detailed lists of each

[1] ULS billed for both Sandy Bernstein's and Andrea Procaccino's time when the defendants or court officers specifically requested that Ms. Procaccino participate in a meeting or conference call. Kathy Sawyer requested that Ms. Procaccino attend all of the special review meetings on *Evans* class members (often referred to as the *Evans* 17 meetings). Cathy Costanzo does not attend these meetings.

category of costs; we have the extensive underlying invoices for each item, should you request a copy.

Consistent with our established practice, we have billed all travel time at one half of our hourly rate. In the interest of getting cheaper airline tickets, we always have tried to make reservations at the earliest possible time when prices are lower, and we often have flown on no-frill airlines, such as Southwest. As a matter of routine, we have used Priceline or a comparable on-line service to get discounted hotel rooms. Marcia Boundy and I have shared hotel rooms when staying in D.C. to further reduce costs.

We would like to meet with you on the day of the next *Evans* parties' meeting to discuss this request. We anticipate that this gives you sufficient time to review this submission. We are available to answer any questions that you might have concerning the enclosed request. Thank you for your attention.

Sincerely,

/s/ Cathy E. Costanzo
Cathy E. Costanzo

Enclosures

cc: Stephen Hanlon
Paul Kiernan
Sandra Bernstein
Marcia Boundy

Evans v. Fenty
Summary of Fees and Costs
(May 16, 2011 - May 15, 2012)

	Total Lodestar	Requested Lodestar	Total Costs	Requested Costs	Total Request (Fees + Costs)
CPR	248,871.00	241,753.00	13,913.26	13,913.26	255,666.26
ULS	207,164.00	200,272.00	437.05	437.05	200,709.05
H&K	1,718.00	1,718.00	0.00	0.00	1,718.00
TOTALS	457,753.00	443,743.00	14,350.31	14,350.31	458,093.31

Evans v. Fenty

Summary of Fees
May 16, 2011 - May 15, 2012

Attorney	Total Hours	Rate	Lodestar	No Charge Hours	Requested Hours	Amount Requested
CPR						
Cathy Costanzo	265.40	$ 505.00	$ 134,027	6.60	258.80	$ 130,694
Cathy Costanzo (Travel)	84.60	$ 252.50	$ 21,362	0.00	84.60	$ 21,362
	350.00		$ 155,389	6.60	343.40	$ 152,056
Marcia Boundy	580.30	$ 145.00	$ 84,144	26.10	554.20	$ 80,359
Marcia Boundy (Travel)	128.80	$ 72.50	$ 9,338	0.00	128.80	$ 9,338
	709.10		$ 93,482	26.10	683.00	$ 89,697
CPR Total Fees	1,059.10		$ 248,871	32.70	1,026.40	**$ 241,753**
ULS						
Sandy Bernstein	374.30	$ 445.00	$ 166,564	7.70	366.60	$ 163,137
Andrea Procaccino	280.00	$ 145.00	$ 40,600	23.90	256.10	$ 37,135
ULS Total Fees	654.30		$ 207,164	31.60	622.70	**$ 200,272**
H&K						
Stephen Hanlon	2.10	$ 505.00	$ 1,061	0.00	2.10	$ 1,061
Paul Kiernan	1.30	$ 505.00	$ 657	0.00	1.30	$ 657
H&K Total Fees	3.40		$ 1,718	0.00	3.40	**$ 1,718**
Totals	1,716.80		**$ 457,753**	64.30	1,652.50	**$ 443,743**

CENTER FOR PUBLIC REPRESENTATION
22 Green Street, Northampton, MA 01060
Voice & TTY 413-586-6024 Fax 413-586-5711
www.centerforpublicrep.org

December 22, 2014

Ellen Efros, Deputy Attorney General
Matthew Belcher, Equity Section
Office of the Attorney General
Public Interest Division
Judiciary Square
441 Fourth Street, NW, Suite 900 South
Washington, DC 20001

Dear Ellen and Matthew:

Enclosed please find the plaintiffs' time and expenses for the 12-month period from May 16, 2012 through May 15, 2013. The requested amount, $449,030.31, falls under the agreed-upon stipulation that caps attorney's fees and costs at $500,000 a year, absent active litigation. We are hopeful that we can maintain our established practice of resolving fees and costs without litigation.

Toward that end, we have included in this mailing a detailed listing of attorney's fees and costs during the relevant time period. The listing represents the work performed by one attorney and one paralegal at the Center for Public Representation (CPR) and one attorney and one nurse consultant at University Legal Services (ULS). Although Holland and Knight (H&K) continues to stay involved, the firm has elected not to bill for this period. To facilitate your review, we have enclosed summary charts that note the time spent and the expenses incurred by the two firms. The Summary of Fees chart sets forth the total amount of time each lawyer and each firm worked and the reimbursement that each is seeking. The Summary of Costs chart delineates the costs each firm incurred and the amount that each is seeking to be reimbursed.

Frequent parties meetings that addressed the defendants' efforts to achieve compliance marked this 12-month period. The parties also met to discuss ongoing health and safety concerns associated with class members, particularly those formerly served by IDI. In addition, the joint monitoring protocol and the compliance certification process continued to be refined during this time. The defendants ultimately submitted the following certifications for compliance during this period: adequate budget; staff training; and specific criteria under residential and vocational services. We believe that these all are significant matters that fall squarely within the rubric of compensable activities.

In keeping with past practice, we have made voluntary reductions in all aspects of this fee request in order to facilitate a settlement. This submission, as well as all subsequent discussions concerning the fee request, are made in a spirit of compromise and are subject to Fed. R. Ev. 408.

I. TIME

In order to avoid duplication and over-lawyering, virtually all the work during this period was done by CPR and ULS.

The majority of the work was performed by two attorneys (Cathy Costanzo and Sandra Bernstein), an experienced paralegal (Marcia Boundy), and a nurse consultant (Andrea Procaccino). ULS did not bill for Ms. Procaccino's time when both she and Ms. Bernstein attended a meeting or participated in a conference call.[1] In total, CPR and ULS have not charged for 64.3 hours in this fee submission. This division of responsibility and assignments was designed to ensure efficiency and reasonable billing practices.

II. RATES

Consistent with the Supreme Court's holding in *Blum v. Stenson*, 465 U.S. 886 (1984), the plaintiffs are entitled to fees that reflect the current market rates of their attorneys. Holland & Knight's rates are considerably higher than their rates under the *Laffey* Matrix, established by the U.S. Attorney's Office. In the spirit of compromise and recognizing that the firm has a strong commitment to *pro bono* work, the attorneys at Holland and Knight voluntarily have reduced their rates to the *Laffey* rates, consistent with their past practice in this case. CPR and ULS attorneys are also seeking payment in accord with the *Laffey* rates, consistent with recent decisions in the District.

III. COSTS

The costs associated with this request are minimal. We have deleted any item that is not compensable under Circuit Court precedents. We have included detailed lists of each category of costs; we have the extensive underlying invoices for each item, should you request a copy.

Consistent with our established practice, we have billed all travel time at one half of our hourly rate. In the interest of getting cheaper airline tickets, we always have tried to make reservations at the earliest possible time when prices are lower, and we have flown on no-frill airlines, such as Southwest. As a matter of routine, we have used Priceline or a comparable

[1] ULS billed for both Ms. Bernstein's and Ms. Procaccino's time when the defendants or court officers specifically requested that Ms. Procaccino participate in a meeting or conference call. Kathy Sawyer requested that Ms. Procaccino attend all of the special review meetings on *Evans* class members (often referred to as the *Evans* 17 meetings). Cathy Costanzo did not attend these meetings.

on-line service to get discounted hotel rooms. Marcia Boundy and I continued our practice of a shared hotel room when staying in D.C. to further reduce costs.

We would like to talk with you during the week of January 5, 2015 to discuss this request. We anticipate that this gives you sufficient time to review this submission. We are available to answer any questions that you might have concerning the enclosed request. Thank you for your attention.

Sincerely,

/s/ Cathy E. Costanzo
Cathy E. Costanzo

Enclosures

Cc Paul Kiernan
Sandra Bernstein
Marcia Boundy

Evans v. Fenty
Summary of Fees and Costs
(May 16, 2012 - May 15, 2013)

	Total Lodestar	Requested Lodestar	Total Costs	Requested Costs	Total Request (Fees + Costs)
CPR	255,929.00	248,707.00	13,188.51	13,188.51	261,895.51
ULS	190,820.00	186,892.00	242.80	242.80	187,134.80
TOTALS	446,749.00	435,599.00	13,431.31	13,431.31	449,030.31

Evans v. Fenty

Summary of Fees
May 16, 2012 - May 15, 2013

Attorney	Total Hours	Rate	Lodestar	No Charge Hours	Requested Hours	Amount Requested
CPR						
Cathy Costanzo	255.30	$ 520.00	$ 132,756	7.10	248.20	$ 129,064
Cathy Costanzo (Travel)	87.00	$ 260.00	$ 22,620	4.00	83.00	$ 21,580
	342.30		$ 155,376	11.10	331.20	$ 150,644
Marcia Boundy	613.30	$ 150.00	$ 91,995	16.60	596.70	$ 89,505
Marcia Boundy (Travel)	114.10	$ 75.00	$ 8,558	0.00	114.10	$ 8,558
	727.40		$ 100,553	16.60	710.80	$ 98,063
CPR Total Fees	1,069.70		$ 255,929	27.70	1,042.00	**$ 248,707**
ULS						
Sandy Bernstein	348.50	$ 460.00	$ 160,310	1.30	347.20	$ 159,712
Andrea Procaccino	203.40	$ 150.00	$ 30,510	22.20	181.20	$ 27,180
ULS Total Fees	551.90		$ 190,820	23.50	528.40	**$ 186,892**
Totals	1,621.60		**$ 446,749**	51.20	1,570.40	**$ 435,599**

CENTER FOR PUBLIC REPRESENTATION
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January 13, 2016

Matthew Blecher, Equity Section
Office of the Attorney General
Public Interest Division
Judiciary Square
441 Fourth Street, NW, Suite 900 South
Washington, DC 20001

Dear Matthew:

Enclosed please find the plaintiffs' time and expenses for the 12-month period from May 16, 2013 through May 15, 2014. The actual amount of fees and costs, even with voluntary reductions total requested amount, $518,191.59, is above the agreed-upon stipulation that caps attorney's fees and costs at $500,000 a year, absent active litigation. As such, we are seeking the full amount of fees and costs under the fee cap. We are hopeful that we can maintain our established practice of resolving fees and costs without litigation.

Consistent with our past practice, we have included in this mailing a detailed listing of attorney's fees and costs during the relevant time period. The listing represents the work performed by one attorney and one paralegal at the Center for Public Representation (CPR) and one attorney and one nurse consultant at University Legal Services (ULS). Although Holland and Knight (H&K) continues to stay involved, the firm has elected not to bill for this period. To facilitate your review, we have enclosed summary charts that set forth the time spent and the expenses incurred by CPR and ULS. The first chart, titled "Summary of Fees and Costs," specifies both total and requested amounts; the second chart, titled Summary of Fees," sets forth the total amount of time each lawyer and each firm worked and the reimbursement that each is seeking. Also included are detailed listings of the costs each firm incurred and the amount that each is seeking to be reimbursed.

Frequent parties meetings that addressed the defendants' efforts to achieve compliance marked this 12-month period. The plaintiffs also continued to monitor the mortality reports, IMEU reports and other quality assurance materials during this time. The parties also continued their joint focus on the ongoing health and safety concerns associated with class members, particularly those formerly served by IDI. The joint monitoring protocol and the compliance certification process continued to be refined during this period. The

defendants ultimately submitted thousands of pages of evidence in support of their certifications for compliance in the following areas: Individual Habilitation Plans, Protection from Harm, Quality Assurance and Case Management. The plaintiffs analyzed and reviewed the defendants' certifications and the Court Monitor's findings in each of these very significant areas and submitted detailed responses to the parties, and specifically, to the Special Master. We believe that these all are significant matters that fall squarely within the rubric of compensable activities.

In keeping with past practice, we have made voluntary reductions in all aspects of this fee request in order to facilitate a settlement. This submission, as well as all subsequent discussions concerning the fee request, are made in a spirit of compromise and are subject to Fed. R. Ev. 408.

I. TIME

In order to avoid duplication and over-lawyering, virtually all the work during this period was done by CPR and ULS.

The majority of the work was performed by two attorneys (Cathy Costanzo and Sandra Bernstein), an experienced paralegal (Marcia Boundy), and a nurse consultant (Andrea Procaccino). ULS did not bill for Ms. Procaccino's time when both she and Ms. Bernstein attended a meeting or participated in a conference call.[1] As in the past, we have allocated responsibilities for certain areas to specific staff. Although evaluating and responding to the certification process was something undertaken by Ms. Bernstein, Ms. Boundy and Ms. Costanzo, a significant amount of the data analysis associated with ultimately evaluating the certifications and the plaintiffs' subsequent response was done by Ms. Boundy. This significantly reduced the amount of our lodestar, given Ms. Boundy's substantially lower rate. In total, CPR and ULS have not charged for 59.70 hours in this fee submission. This division of responsibility and assignments was designed to ensure efficiency and reasonable billing practices.

II. RATES

Consistent with the Supreme Court's holding in *Blum v. Stenson*, 465 U.S. 886 (1984), the plaintiffs are entitled to fees that reflect the current market rates of their attorneys. Holland & Knight's rates are considerably higher than their rates under the *Laffey* Matrix, established by the U.S. Attorney's Office.

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[1] ULS only billed for both Ms. Bernstein and Ms. Procaccino's time when they attended meetings about the class members formerly supported by Individual Development, Inc. (IDI). At those meetings, the parties discussed nursing deficiencies and nurses from both DDS and from the Court Monitor's office attended. Therefore, it was necessary for plaintiffs' nurse consultant to be in attendance. In addition, Kathy Sawyer asked Ms. Procaccino to attend the meetings.

III. COSTS

The costs associated with this request are minimal. We have deleted any item that is not compensable under Circuit Court precedents. We have included detailed lists of each category of costs; we have the extensive underlying invoices for each item, should you request a copy.

Consistent with our established practice, we have billed all travel time at one half of our hourly rate. In the interest of getting cheaper airline tickets, we always have tried to make reservations at the earliest possible time when prices are lower, and we have flown on no-frill airlines, such as Southwest. As a matter of routine, we have used Priceline or a comparable on-line service to get discounted hotel rooms. Ms. Boundy and I continued our practice of a shared hotel room when staying in D.C. to further reduce costs.

We would like to talk with you during the week of January 25, 2016 to discuss this request. We anticipate that this gives you sufficient time to review this submission. We are available to answer any questions that you might have concerning the enclosed request. Thank you for your attention.

Sincerely,

Cathy E. Costanzo

Enclosures

Cc Paul Kiernan
Sandra Bernstein
Marcia Boundy

Evans v. Bowser
Summary of Fees and Costs
(May 16, 2013 - May 15, 2014)

	Total Lodestar	Requested Lodestar	Total Costs	Requested Costs	Total Request (Fees + Costs)
CPR	285,409.00	277,931.00	10,637.10	10,637.10	288,568.10
ULS	239,153.00	229,260.00	363.49	363.49	229,623.49
TOTALS	524,562.00	507,191.00	11,000.59	11,000.59	518,191.59

Evans v. Bowser

Summary of Fees
May 16, 2013 - May 15, 2014

Attorney	Total Hours	Rate	Lodestar	No Charge Hours	Requested Hours	Amount Requested
CPR						
Cathy Costanzo	292.00	$ 530.00	$ 154,760	7.60	284.40	$ 150,732
Cathy Costanzo (Travel)	66.00	$ 265.00	$ 17,490	0.00	66.00	$ 17,490
	358.00		$ 172,250	7.60	350.40	$ 168,222
Marcia Boundy	706.70	$ 154.00	$ 108,832	22.40	684.30	$ 105,382
Marcia Boundy (Travel)	56.20	$ 77.00	$ 4,327	0.00	56.20	$ 4,327
	762.90		$ 113,159	22.40	740.50	$ 109,709
CPR Total Fees	1,120.90		$ 285,409	30.00	1,090.90	**$ 277,931**
ULS						
Sandy Bernstein	432.10	$ 504.00	$ 217,778	15.20	416.90	$ 210,118
Andrea Procaccino	138.80	$ 154.00	$ 21,375	14.50	124.30	$ 19,142
ULS Total Fees	570.90		$ 239,153	29.70	541.20	**$ 229,260**
Totals	1,691.80		**$ 524,562**	59.70	1,632.10	**$ 507,191**

August 29, 2016

Matthew Blecher, Equity Section
Office of the Attorney General
Public Interest Division
Judiciary Square
441 Fourth Street, NW, Suite 900 South
Washington, DC 20001

Dear Matthew:

Enclosed please find the plaintiffs' time and expenses for the 12-month period from May 16, 2014 through May 15, 2015. The actual fees and costs, with voluntary reductions, total $204,105.11. Obviously this amount is less than half of the fee cap for a 12-month period. We are hopeful that we can maintain our established practice of resolving fees and costs without litigation.

Consistent with our past practice, we have included in this mailing a detailed listing of attorney's fees and costs during the relevant time period. The listing represents the work performed by one attorney and one paralegal at the Center for Public Representation (CPR) and one attorney and one nurse consultant at University Legal Services (ULS). Although Holland and Knight (H&K) continues to stay involved, the firm has elected not to bill for this period. To facilitate your review, we have enclosed summary charts that set forth the time spent and the expenses incurred by CPR and ULS. The first chart, titled "Summary of Fees and Costs," specifies both total and requested amounts; the second chart, titled Summary of Fees," sets forth the total amount of time each lawyer and each firm worked and the reimbursement that each is seeking. Also included are detailed listings of the costs each firm incurred and the amount that each is seeking to be reimbursed.

The joint monitoring protocol and the compliance certification process continued to be refined during this period. The defendants ultimately submitted thousands of pages of evidence in support of their certifications for compliance in the following areas: Individual Habilitation Plans/ISPs, Protection from Harm, Quality Assurance, Case Management, and Residential/Day/Vocational. The plaintiffs analyzed and reviewed the defendants' certification submissions and the Court Monitor's findings in each of these critical areas and submitted detailed responses to the parties, and specifically, to the Special Master. We believe that these all are significant matters that fall squarely within permissible compensable activities.

There were fewer parties meetings that addressed the defendants' efforts to achieve compliance during this 12-month period. This was in part attributable to the defendants' internal compliance efforts and Judge Huvelle's absence following her accident. The plaintiffs continued to monitor the mortality reports, IMEU reports and other quality assurance materials during this time. The parties also continued their joint focus on the

ongoing health and safety concerns associated with class members, particularly the transition of individuals transitioning from IDI. In addition, the plaintiffs spent considerable time focused on at-risk class members, employment issues and the transition of responsibilities to the Quality Trust.

In keeping with past practice, we have made voluntary reductions in all aspects of this fee request in order to facilitate a settlement. This submission, as well as all subsequent discussions concerning the fee request, are made in a spirit of compromise and are subject to Fed. R. Ev. 408.

I. TIME

CPR and ULS did virtually all the work, during this period, in order to avoid duplication and over-lawyering. Consistent with our last fee request, the majority of the work during this period was performed by two attorneys (Cathy Costanzo and Sandra Bernstein), an experienced paralegal (Marcia Boundy), and a nurse consultant (Andrea Procaccino). As in the past, we have allocated responsibilities for certain areas to specific staff. Although evaluating and responding to the certification process was something undertaken by Ms. Bernstein, Ms. Boundy and Ms. Costanzo, a significant amount of the data analysis associated with ultimately evaluating the certification submissions and the plaintiffs' subsequent response were done by Ms. Boundy. This significantly reduced the amount of our lodestar, given Ms. Boundy's substantially lower rate. In total, CPR and ULS have not charged for 28.50 hours in this fee submission. This division of responsibility and assignments was designed to ensure efficiency and reasonable billing practices.

II. RATES

Consistent with the Supreme Court's holding in *Blum v. Stenson*, 465 U.S. 886 (1984), the plaintiffs are entitled to fees that reflect the current market rates of their attorneys. Holland & Knight's rates are considerably higher than their rates under the *Laffey* Matrix, established by the U.S. Attorney's Office.

III. COSTS

The costs associated with this request are minimal. We have deleted any item that is not compensable under Circuit Court precedents. We have included detailed lists of each category of costs; we have the extensive underlying invoices for each item, should you request a copy.

Consistent with our established practice, we have billed all travel time at one half of our hourly rate. In the interest of getting cheaper airline tickets, we always have tried to make reservations at the earliest possible time when prices are lower, and we have flown on no-frill airlines, such as Southwest. As a matter of routine, we have used Priceline or a comparable on-line service to get discounted hotel rooms. Ms. Boundy and I continued our practice of a shared hotel room when staying in D.C. to further reduce costs.

We would like to talk with you during the week of September 12, 2016 to discuss this request. We anticipate that this gives you sufficient time to review this submission. We are available to answer any questions that you might have concerning the enclosed request. We are also starting to prepare our next fee submission (May 16, 2015 to May 15, 2016) that we hope to get to you in the next few weeks.

Thank you for your attention.

Sincerely,

/s/ Cathy E. Costanzo
Cathy E. Costanzo

Enclosures

Cc Paul Kiernan
Sandra Bernstein
Marcia Boundy

Evans v. Bowser
Summary of Fees and Costs
(May 16, 2014 - May 15, 2015)

	Total Lodestar	Requested Lodestar	Total Costs	Requested Costs	Total Request (Fees + Costs)
CPR	130,829.00	127,462.00	3,790.12	3,790.12	131,252.12
ULS	76,023.00	72,833.00	19.99	19.99	72,852.99
TOTALS	206,852.00	200,295.00	3,810.11	3,810.11	204,105.11

Evans v. Bowser

Summary of Fees
May 16, 2014 - May 15, 2015

Attorney	Total Hours	Rate	Lodestar	No Charge Hours	Requested Hours	Amount Requested
CPR						
Cathy Costanzo	107.70	$ 530.00	$ 57,081	4.00	103.70	$ 54,961
Cathy Costanzo (Travel)	28.00	$ 265.00	$ 7,420	0.00	28.00	$ 7,420
	135.70		$ 64,501	4.00	131.70	$ 62,381
Marcia Boundy	422.00	$ 154.00	$ 64,988	8.10	413.90	$ 63,741
Marcia Boundy (Travel)	17.40	$ 77.00	$ 1,340	0.00	17.40	$ 1,340
	439.40		$ 66,328	8.10	431.30	$ 65,081
CPR Total Fees	575.10		$ 130,829	12.10	563.00	**$ 127,462**
ULS						
Sandy Bernstein	133.30	$ 504.00	$ 67,183	1.90	131.40	$ 66,226
Andrea Procaccino	57.40	$ 154.00	$ 8,840	14.50	42.90	$ 6,607
ULS Total Fees	190.70		$ 76,023	16.40	174.30	**$ 72,833**
Totals	765.80		**$ 206,852**	28.50	737.30	**$ 200,295**

CPR Travel Costs

Cathy Costanzo			
5/21/14 - 5/22/14	Airfare	539.00	
	Hotel	151.98	
	Cabs	46.63	[18+8+20.63]
	Parking	24.00	
	Mileage	29.10	[60 miles *.485]
	M&I	106.50	[53.25+53.25]
		897.21	
3/18/15 - 3/19/15	Airfare	415.15	
	Hotel	240.58	
	Cabs	39.69	[29.69+10]
	Parking	23.84	
	Mileage	29.10	[60*.485]
	M&I	106.50	[53.25+53.25]
		854.86	
4/29/15 - 4/30/15	Airfare	421.20	
	Hotel	210.85	
	Cabs	43.75	[20.+23.75]
	Mileage	29.10	[60*.485]
	Parking	51.31	
	M&I	106.50	[53.25+53.25]
		862.71	
Total Travel (Costanzo):		**2614.78**	
Marcia Boundy			
03/18/15 - 03/19/15	Airfare	320.20	
	Hotel	0.00	
	Mileage	49.47	[102*.485]
	Parking	28.00	
	M&I	106.50	[53.25+53.25]
		504.17	
4/29/15 - 4/30/15	Airfare	461.20	[435.20+26]
	Hotel	0.00	
	Cabs	26.00	
	Mileage	49.47	[102*.485]
	Parking	28.00	
	M&I	106.50	[53.25+53.25]
		671.17	
Total Travel (Boundy):		**1175.34**	
TOTAL CPR TRAVEL COSTS		**3,790.12**	

DISABILITY RIGHTS DC
at University Legal Services

University Legal Services' Costs
Evans v. Bowser
May 16, 2014- May 15, 2015

2/22/14	Mailing of CD of Quality Assurance documents to CPR	$19.99
	TOTAL:	$19.99

220 I Street, NE, Suite 130
Washington, D.C. 20002
(202) 547-0198 Fax: (202) 547-2662 TTY: (202) 547-2657
sbernstein@uls-dc.org

Evans v. Bowser
Summary of Fees and Costs - CORRECTED CHART
(May 16, 2014 - May 15, 2015)

	Total Lodestar	Requested Lodestar	Total Costs	Requested Costs	Total Request (Fees + Costs)
CPR	130,829.00	127,462.00	3,790.12	3,790.12	131,252.12
ULS	76,023.00	75,066.00	19.99	19.99	75,085.99
TOTALS	206,852.00	202,528.00	3,810.11	3,810.11	206,338.11

Evans v. Bowser

Summary of Fees - CORRECTED CHART
May 16, 2014 - May 15, 2015

Attorney	Total Hours	Rate	Lodestar	No Charge Hours	Requested Hours	Amount Requested
CPR						
Cathy Costanzo	107.70	$ 530.00	$ 57,081	4.00	103.70	$ 54,961
Cathy Costanzo (Travel)	28.00	$ 265.00	$ 7,420	0.00	28.00	$ 7,420
	135.70		$ 64,501	4.00	131.70	$ 62,381
Marcia Boundy	422.00	$ 154.00	$ 64,988	8.10	413.90	$ 63,741
Marcia Boundy (Travel)	17.40	$ 77.00	$ 1,340	0.00	17.40	$ 1,340
	439.40		$ 66,328	8.10	431.30	$ 65,081
CPR Total Fees	575.10		$ 130,829	12.10	563.00	**$ 127,462**
ULS						
Sandy Bernstein	133.30	$ 504.00	$ 67,183	1.90	131.40	$ 66,226
Andrea Procaccino	57.40	$ 154.00	$ 8,840	**0.00**	57.40	$ 8,840
ULS Total Fees	190.70		$ 76,023	1.90	188.80	**$ 75,066**
Totals	765.80		**$ 206,852**	14.00	751.80	**$ 202,528**

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

D.L., *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, *et al.*, Defendants.	Civil Action No. 05-1437 (RCL)

DECLARATION OF MARK H. TUOHEY, III

1. My name is Mark H. Tuohey, III, and I am currently employed as the Director of the District of Columbia (District) Mayor's Office of Legal Counsel. I have held this position since February 1, 2015, and have been engaged in the practice of law in the District since 1978. I have prepared a short summary of my professional accomplishments during that time, which is attached as Exhibit A.

2. From 2003 until 2015, while I was a partner in the District offices of Vinson & Elkins LLP, and later Brown Rudnick LLP, I represented Metropolitan Police Department Chief Charles Ramsey in *Barham v. Ramsey*, No. 02-cv-2283 (D.D.C.), and *Chang v. United States*, No. 02-cv-2010 (D.D.C.). *Barham* and *Chang* were civil rights class actions brought by protesters arrested during demonstrations at Pershing Park in 2002 and sought (among other relief) structural changes to the Department's policies for handling First Amendment assemblies and mass demonstrations.

3. As required by D.C. Code § 5-115.04, the District reimbursed me for the fees and costs of my legal services on behalf of Chief Ramsey in these cases. The hourly rates for my legal services and those of the associates working with me were calculated using the United States Attorney's Office *Laffey* Matrix (USAO Matrix), which marked a substantial discount from the customary hourly billing rates at both Vinson & Elkins LLP, and Brown Rudnick LLP in the District.

4. It is my opinion that the rate schedule established by the USAO Matrix is sufficient to induce a capable attorney to engage in complex civil rights litigation involving the District government and its officials. As explained, that was my experience in *Barham* and *Chang*, in which the USAO Matrix hourly rates were in fact sufficient for me and my law firms to undertake Chief Ramsey's defense.

I declare under penalty of perjury that the foregoing, consisting of two pages and four paragraphs, is true and correct.

Dated: 2/7/17

MARK H. TUOHEY, III

Summary of Professional Accomplishments for Mark H. Tuohey, III

Mark Tuohey currently serves as the Director of the Mayor's Office of Legal Counsel in the Executive Office of Washington, D.C. Mayor Muriel Bowser. In this role, Mark provides legal and policy advice to the Mayor, as well as Executive Branch agencies of the District, and supervises the work of agency general counsels.

Mark previously served as a partner in the Washington, D.C. law firm of Brown Rudnick, where he practiced in complex civil and criminal investigation, internal corporate investigations and compliance programs. He represented corporations, their officers and directors, and individuals in civil and white-collar criminal litigation, internal corporate investigations, and Congressional investigations. In addition, Mark is involved in alternative dispute resolution matters including arbitration and mediation, in the US and abroad.

Mark has represented clients in a variety of national and international investigations and litigation matters. These matters have included investigations by the United States Department of Justice, the SEC and other federal regulatory agencies, congressional oversight committees, as well as investigative agencies in Europe, Africa, Asia, the Middle East and Latin America. He is a Fellow of the American College of Trial Lawyers.

Mark has served as the President of the District of Columbia Bar Foundation, Chair of the D.C. Police Foundation, and Chair of the ABA Standing Committee of Government Affairs. He is a Fellow of the American College of Trial Lawyers, and a Trustee of Fordham University and the Catholic University of America, and a past Trustee of Gonzaga College High School.

A former federal prosecutor in Washington, D.C., Mark has served on occasion as special prosecutor appointed by the government to conduct investigations into public policy issues, including policing, anti-terrorism preparedness, official corruption, and rule of law initiatives. He served as the Chair of the District of Columbia Sports and Entertainment Commission from 2004 to 2007, where he oversaw the return of Major League Baseball to Washington, D.C. From September, 1994 to September, 1995 he served as Principal Deputy Independent Counsel, Whitewater Investigation.

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

D.L., *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, *et al.*, Defendants.	Civil Action No. 05-1437 (RCL)

DECLARATION OF ROBERT E. DESO

1. My name is Robert E. Deso. I am a partner of the law firm of Deso & Buckley, P.C.; I was also a partner of its predecessor firm since 1978. Prior to that, I was Deputy General Counsel of the Metropolitan Police Department (MPD), and a JAGC officer in the U.S. Army. A copy of my curriculum vitae is attached as Exhibit A.

2. From 2003 until 2016, I represented MPD Assistant Chief Peter Newsham in *Barham v. Ramsey*, No. 02-cv-2283 (D.D.C.) and *Chang v. United States*, No. 02-cv-2010 (D.D.C.). *Barham* and *Chang* were civil rights class actions brought by protesters arrested in Pershing Park during mass demonstrations against the WB/IMF in September 2002. Plaintiffs sought (among other relief) changes to the Department's policies for handling First Amendment assemblies and mass demonstrations.

3. As required by D.C. Code § 5-115.04, the District reimbursed me for the fees and costs of my representation of Assistant Chief Newsham in these cases.

The hourly rates for my legal services were calculated using the United States Attorney's Office *Laffey* Matrix (USAO Matrix).

4. Since entering private practice in 1978, I have litigated with, and against, the District Government in many other cases. Each time, I billed the government for my legal services using the hourly rates established by the USAO Matrix.

5. Based on my experience, it is my opinion that the rate schedule established by the USAO Matrix is sufficient to induce an experienced, capable attorney to engage in complex civil rights litigation involving the District government and its officials.

I declare under penalty of perjury that the foregoing, consisting of two pages and five paragraphs, is true and correct.

Dated: 2/6/17

Robert E. Deso

ROBERT E. DESO

LAW OFFICES
DESO & BUCKLEY, P.C.
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1828 L STREET, N.W.
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ROBERT E. DESO (DC, VA)
DAVID W. BUCKLEY (DC, MD, VA)
OF COUNSEL
EDWARD M. STATLAND (DC, MD)
RONALD W. STERN (DC, VA)

VIRGINIA
10521 JUDICIAL DRIVE
JUDICIAL COURT, SUITE 204
FAIRFAX, VA 22030

ROBERT E. DESO

PROFESSIONAL BIOGRAPHY

EDUCATION

JURIS DOCTOR (J.D.) -- University Of Virginia Law School (June 1968).

BACHELOR OF SCIENCE, FOREIGN SERVICE (B.S.F.S.) -- Georgetown University School of Foreign Service (June, 1965). Major -- International Affairs.

EXPERIENCE

Private Practice (1978 to present)

Named partner and principal in present firm and predecessor firms.

Engaged in the civil practice of law, with concentrations in employment law and labor relations, arbitration, and civil litigation in police cases. Clients have included the Fraternal Order of Police/Metropolitan Police Department Labor Committee, the union for MPD officers and sergeants, in the 1980's and 1990's. Currently, represent D.C. and U.S. Government employees and retirees in employment matters. Represent active and retired law enforcement associations regarding legislation and litigation for increased pension benefits. Practice in D.C. and Federal courts at trial and appellate levels, before the U.S. Merit Systems Protection Board, the American Arbitration Association and the D.C. Office of Employee Appeals.

Significant areas of practice have included adverse actions, grievances, unfair labor practices, recognition petition proceedings, disability retirement cases, FLSA, defense of police officers in civil litigation, litigation against D.C. and U.S. Governments. Was FOP member of tri-partite Boards of Arbitration regarding compensation for D.C. Police in 1984 and 1991. (FOP won both cases.) Have successfully represented MPD officers in three FLSA overtime cases. Have successfully represented retired MPD and U.S. Secret Service members in major pension increase litigation cases in D.C. and U.S. Courts. Have represented law enforcement officers in many administrative hearings and arbitration cases

involving discipline and grievances since 1982. Have drafted contract language and prepared legislation for active and retired police.

Office of the General Counsel, Metropolitan Police Department (1973-1978)
As Assistant (1973-1975), then Deputy General Counsel (1975-1978), provided legal advice to the Chief of Police and senior officials of the Metropolitan Police Department of the District of Columbia. Prepared policy documents regarding mass arrests, search and seizure, enforcement of disorderly conduct laws, and other topics. Was management's legal representative for labor relations. Provided policy and on-site legal advice to Commander of the Special Operations Division regarding demonstrations, barricade situations and special events. Provided legal advice for the first D.C. "sting operation". Prepared training films and provided in- service training to police officers and officials. Chaired the Department's Use of Service Weapons Review Board. Coordinated defense of civil litigation against the Department with the Office of the Corporation Counsel. Reviewed and drafted legislation.

U.S. Army Judge Advocate General Corps (1968-1973)
Successfully completed Infantry Officer Basic Course, Fort Benning, GA; Vietnamese Language School, Fort Bliss, Texas (32 weeks); Judge Advocate General Basic Course, Charlottesville, VA.

Chief Defense Counsel, Fort Dix, NJ, (1/70 - 8/71). Tried approximately 100 criminal cases and supervised eight other trial attorneys.

Judge Advocate Advisor, Danang, Vietnam, (9/71 - 9/72). Command Judge Advocate to the U.S. Commanding General of I Corps, MACV. Judge Advocate Advisor to the Vietnamese Chief Prosecutor of I Corps and to the Commandant of the Vietnamese Prison in I Corps.

Special Assistant to the Judge Advocate General, The Pentagon, Washington, D.C. (9/72 - 5/73). Primary researcher and author of Law at War, part of the Army Vietnam Studies Series.

ADMISSION TO COURTS

U.S. Court of Appeals for the District of Columbia; U.S. District Court, District of Columbia; District of Columbia Court of Appeals; Supreme Court of Virginia; U.S. District Court for the Eastern District of Virginia; U.S. Court of Appeals for the Federal Circuit; U.S. Claims Court; United States Court of Military Appeals; U.S. Court of Appeals for the Fourth Circuit; U.S. Tax Court.

BAR ADMISSIONS AND PROFESSIONAL SOCIETIES

District of Columbia Bar; Virginia State Bar; Bar Association of the District of Columbia;

HOURS – Laffey Rates (All at Current Rate) – June 30, 2015 – CONFIDENTIAL FOR SETTLEMENT DISCUSSIONS

REVISED

EXHIBIT 7

June 05 – May 06	Hours	**Totals**
WLK	22.1 ($ 11,492.00) ($520)	
JWB	15.2 (4,560.00) ($300)	
		37.3 ($ 16,052.00)
June 06 – May 07	Hours	
WLK	23.8 ($ 12,376.00) ($520)	
JWB	100.6 ($ 30,180.00) ($300)	
MB	8.2 ($ 1,230.00) ($150)	
		132.6 ($ 43,786.00)
June 07 – May 08	Hours	
WLK	122.15 ($ 63,518.00) ($520)	
JWB	166.5 ($ 49,950.00) ($300)	
MP	9.1 ($ 4,186.00) ($460)	
		297.75 ($ 117,654.00)
June 08 – May 09	Hours	
WLK	160.6 ($ 83,512.00) ($520)	
JWB	206.4 ($ 76,368.00) ($370)	
MSW	.4 ($ 208.00) ($520)	
		367.4 ($ 160,088.00)
June 09 – May 10	Hours	
WLK	69.35 ($ 36,062.00) ($520)	
JWB	47.2 ($ 17,464.00) ($370)	
MSW	3.8 ($ 1,976.00) ($520)	
JMK	146.9 ($ 44,070.00) ($300)	
		267.25 ($99,572.00)
June 10 – May 11	Hours	
WLK	18.1 ($ 9,412.00) ($520)	
JMK	6.6 ($ 1,980.00) ($300)	
		24.7 ($ 11,392.00)
June 11 – May 12	Hours	
WLK	130.0 ($ 67,600.00) ($520)	
RB	6.65 ($ 997.50) ($150)	
JMK	63.5 ($ 19,050.00) ($300)	
JP	23.6 ($ 3,540.00) ($150)	
		223.75 ($ 91,187.50)

HOURS – Laffey Rates (All at Current Rate) – June 30, 2015 – CONFIDENTIAL FOR SETTLEMENT DISCUSSIONS

June 12 – May 13	Hours	
WLK	4.4 ($ 2,288.00) ($520)	
JMK	2.2 ($ 660.00) ($300)	
		6.6 ($ 2,948.00)
June 13 – May 14	Hours	
WLK	113.1 ($ 58,812.00) ($520)	
JMK	18.6 ($ 5,580.00) ($300)	
JMK	34.1 ($ 12,617.00) ($370)	
		165.8 ($ 77,009.00)
June 14 – May 15		
WLK	344.05 ($ 178,906.00) ($520)	
JMK	238.5 ($ 88,245.00) ($370)	
MSW	4.75 ($ 2,470.00) ($520)	
REP	7.05 ($ 3,666.00) ($520)	**594.35** ($273,287.00)
June 1, 2015 – June 30, 2015		
WLK	75.05 ($ 39,026.00) ($520)	
JMK	52.35 ($ 19,369.50) ($370)	
MSW	10.3 ($ 5,356.00) ($520)	
REP	12.9 ($ 6,708.00) ($520)	**150.6** ($70,459.50)
TOTAL		**2268.1 ($963,435.00)**

ARNOLD & PORTER LLP

202.942.5000
202.942.5999 Fax
555 Twelfth Street, NW
Washington, DC 20004-1206

July 9, 2012

EXHIBIT 8

Via E-Mail and First Class

Mr. Chad Copeland
Assistant Attorney General
Office of the Attorney General
Public Interest Division, Equity Section
441 4th Street, N.W., Suite 600S
Washington, DC 20001

Re: Adgerson et al. v. District of Columbia, et al.

Dear Chad:

We regret that you have declined to meet with us to negotiate a settlement of the attorneys' fee issue in this case. (See your email of July 2, 2012.)

We have provided you with the actual time records, on which our attorney fee claim is based, for the attorneys, legal assistants and law clerks who have worked on this matter as you requested. Title 42 U.S.C. §1988 and the terms of the settlement agreement provide for payment of a reasonable attorney fee. In this Circuit, courts have relied upon the *Laffey* Matrix, which establishes an hourly rate deemed reasonable for calculating attorney fees in complex federal litigation.[1] Courts in this jurisdiction have consistently applied the *Laffey* Matrix in §1988 cases. *See, e.g., Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C.Cir.1995); *Heller v. District of Columbia*, 832 F. Supp. 2d 32 (D.D.C. 2011). Moreover, the District of Columbia in a recent §1988 case urged the district court to use the USAO *Laffey* Matrix, explaining that it "is the presumptive rate in this jurisdiction for complex litigation" and that "most local court decisions on attorney fees have applied the USAO *Laffey* matrix . . .." *Heller*, 832 F. Supp. 2d at 43 (quoting the brief of the District of Columbia). We have provided you with the most recent version of the *Laffey* Matrix prepared by the U.S. Attorney's Office and a calculation of legal fees based on the Matrix. Your email does not challenge the accuracy of the *Laffey* Matrix calculations or the applicability of the Matrix in determining fees. We submit that the *Laffey* Matrix calculation is accurate.

The *Laffey* Matrix represents a significant discount from Arnold & Porter's standard billing rate. *See Kattan ex rel. Thomas v. District of Columbia*, 995 F.2d 274, 278 (D.C. Cir.

[1] The Matrix is maintained by the United States Attorney's Office for the District of Columbia and is updated annually to reflect increases in the local Consumer Price Index.

1993) ("an attorney's usual billing rate is presumptively the reasonable rate . . . ."); *Heller*, 832 F. Supp. 2d at 43 (same). Limited time charges for Josh Gupta Kagan are $2,076. Mr. Kagan is affiliated with CLC, a non-profit, and does not keep billing records comparable to lawyers in private practice. There are no attorney fee claims pending for additional attorneys. Jack Lipson's time was contributed pro bono and no fees are claimed for the time spent by him on this matter or for Sharra Greer of CLC. The absence of such claims represents a reduction of the already discounted rates reflected in the *Laffey* Matrix.

The D.C. Circuit has held that the calculation of attorneys' fees begins with an establishment of a "lodestar," arrived at simply by multiplying "the number of hours reasonably expended by a reasonable hourly rate." *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C.Cir. 1980) (*en banc*). In effect, the *Laffey* Matrix has become the lodestar in this Circuit. It is also established that settlements "do not weaken [a] claim to fees." *Maher v. Gagne*, 448 U.S. 122, 130 (1980). The Supreme Court and courts in this Circuit do approve attorney fee awards in excess of amounts awarded on the substantive claims:

> *See City of Riverside v. Rivera*, 477 U.S. 561 (1986) (approving an attorney fee award of $245,456 even though the plaintiffs received only $33,350 in damages -- a multiple of over seven times the recovery). In *Rivera*, the Court held that fees awarded under § 1988 need not be proportionate to the amount of damages recovered. *See id.* at 580 (plurality opinion); *id.* at 585 (Powell, J., concurring in the judgment).[2]
>
> *Thomas v. Nat'l Football League Players Ass'n*, 273 F.3d 1124 (D.C.Cir. 2001) (Title VII discrimination claim in which plaintiff was awarded $73,390 in damages.). In *Thomas*, the D.C. Circuit affirmed attorneys' fee award of $338,000 - a multiple of almost 5 times the damages received. The court explained that the fact the the fees awarded were "nearly five times the amount of plaintiff's recovery, does not make them excessive." *Id.* at 1129 (citing *Rivera*, 477 U.S. at 576 ("[R]easonable attorney's fees under § 1988 are not conditioned upon and need not be proportionate to an award of money damages.") (plurality opinion)).
>
> *Williams v. First Gov't Mortg. & Investors Corp.*, 225 F.3d 738 (D.C. Cir. 2000) (Under fee-shifting provision of the District of Columbia Consumer Protection Procedures Act (CPPA), affirming attorney fee award of nearly $200,000 despite only $25,000 damage award - a multiple of 8.). Given the public policy interests served by the

[2] *See also Cowan v. Prudential Ins. Co. of Am.*, 935 F.2d 522 (2d Cir. 1991) (holding that under § 1988 "a presumptively correct lodestar figure should not be reduced simply because a plaintiff recovered a low damage award"); *Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425-26 (2d Cir. 1999) ("Congress enacted fee-shifting in civil rights litigation precisely because the expected monetary recovery in many cases was too small to attract effective legal representation.").

CPPA, the court declined to read a 'rule of proportionality' into that statute. By analogy to the Supreme Court's holding in *Rivera*, the D.C. Circuit reasoned that "[s]uch a rule 'would make it difficult, if not impossible, for individuals with meritorious . . . claims but relatively small potential damages to obtain redress from the courts.'" *Id.* (quoting *Rivera*, 477 U.S. at 578 (plurality opinion)).

Thompson v. Int'l Ass'n of Machinists & Aerospace Workers, 664 F. Supp. 578 (D.D.C. 1987) (awarding $57,906 in fees, which was nearly 30 times the damage award of $2,000 on one of plaintiff's three claims). The court held that "[t]here is, of course, no mathematical rule requiring proportionality between compensatory damages and attorney's fees awards and courts have awarded attorney's fees where plaintiffs recovered only nominal or minimal damages.") (citing cases) (internal citations omitted).

Smith v. District of Columbia, 466 F. Supp. 2d 151, 161 (D.D.C. 2006) (awarding attorney fees of approximately $975,000 in a §1983 action, which was nearly 13.5 times the damage award of $72,000).

David v. District of Columbia, 489 F. Supp. 2d 45 (D.D.C. 2007) (awarding $20,598 in attorney fees under § 1988 despite recovery of nominal damages to plaintiff of $2.00).

Mazloum v. District of Columbia, 654 F. Supp. 2d 1 (D.D.C. 2009) (awarding $333,775.32 in attorney fees in §1983 action, which was more than 11 times the damage award of $30,000).

Jones v. Local 4B, Graphic Arts Int'l Union, AFL-CIO, 595 F. Supp. 792, 794 (D.D.C. 1984) (awarding lodestar amount under § 1988 of $33,000 despite a settlement amount of $15,000).

Ricks v. Barnes, No. 05-1756, 2007 WL 956940 at *1 (D.D.C. Mar. 28, 2007) (awarding attorney fees of $129,935 under §1988 despite a settlement amount of $32,000).

Heller v. Dist. of Columbia Dept. of Housing & Cmty. Dev., No. 84-1670, 1987 WL 15928, (D.D.C. Aug. 14, 1987) ("In *Rivera*, the Supreme Court rejects the view that an award of attorney fees should be in proportion to the amount of damages recovered. The Court emphasizes that the 'civil rights plaintiff vindicates important civil and constitutional rights that cannot be valued solely in monetary terms.' Therefore, our consideration of the reasonableness of Heller's fee petition does not require a determination of its proportionality with the relief accorded to Heller.") (quoting *Rivera*, 477 U.S. at 564 (plurality opinion)).

As you know, this was a civil rights case of first impression in the District of Columbia which presented a federal court challenge under 42 U.S.C. § 1983 to the District's policy and practice of enforcing the ICPC against out-of-state parents who seek custody of their children. The case required substantial pre-filing research into the policy and practice of the District and other jurisdictions that subscribe to the ICPC. The multitude of defenses asserted by the District and Amicus necessitated further research and effort in preparing Plaintiffs' responses to the District's voluminous Motion to Dismiss and, in the Alternative, For Summary Judgment.

The settlement of the substantive claims proposed by the District that was accepted by Plaintiffs and approved by the Court is, to our knowledge, the first challenge to the ICPC in the District that resulted in such recovery. As such, the case represents much more in terms of public policy than the relatively modest amounts recovered by Plaintiffs.

We note that the District has not suggested any sum to settle the issue of attorney fees. You informed the Court that you were prepared to negotiate the amount and asked us to schedule a meeting to settle the issue. In light of the strong precedents in this jurisdiction on the subject of attorney fees in fee-shifting cases, we ask that you reconsider your decision in which you refused to meet to negotiate a settlement of that issue. We are prepared to consider a multiple of the recovery amount as a possible basis for settlement as well as any reasonable objections you have to the application of the *Laffey* Matrix in this case.

We look forward to your reply.

Sincerely,

Jack Lipson
Candida Harty
Jason Ewart
Danielle Garten

Cc: Bradford C. Patrick, Assistant Attorney General
Grace Graham, Chief Equity Section
Ellen Efros, Deputy Attorney General, Public Interest Division.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EXHIBIT 9

OSCAR SALAZAR, et al., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, et al.,

Defendants.

Civil Action No. 93-452 (GK)

FILED
JAN 25 1999
NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER MODIFYING THE AMENDED REMEDIAL ORDER OF MAY 6, 1997 AND VACATING THE ORDER OF MARCH 27, 1997

WHEREAS, the parties desire to resolve the pending appeals in this case,

WHEREAS, upon consideration of Plaintiffs' motion for entry of this Order Modifying the Amended Remedial Order of May 6, 1997, and Vacating the Order of March 27, 1997 (hereafter "Order"), and Defendants' response agreeing to the motion, the Court concludes that the modifications to the Amended Remedial Order of May 6, 1997, and the vacation of the Order of March 27, 1997, set forth herein are fair, reasonable and adequate,

IT IS, this 22nd day of January, 1999, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Amended Remedial Order of May 6, 1997, and the Order of March 27, 1997, are vacated.

I. Monitor

2. Thomas W. Chapman, M.P.H., FACHE, served as Monitor pursuant to Orders of the Court from March 10, 1997, to June 16, 1998. The parties understand that the Court is in the process of

663

selecting a new Monitor. The Monitor shall have the duties and responsibilities set forth in this Order.

3. The function of the Monitor is to report, record, evaluate, observe, and provide recommendations, as appropriate, about Defendants' activities so as to achieve full compliance with the provisions of this Order. The Monitor shall remain neutral and objective in carrying out all monitoring duties. The Monitor shall receive reasonable compensation from the District of Columbia, as determined by the Court.

4. The Monitor shall be under the direct supervision and control of the Court, and shall not be empowered to direct Defendants to take or refrain from taking any specific action to achieve compliance with the provisions of this Order. The Monitor shall endeavor to work cooperatively with Defendants and Plaintiffs, and may recommend efficient and economical methods by which Defendants may achieve compliance.

5. From time to time, as directed by the Court or as provided in this Order, the Monitor shall prepare written reports to the Court, copies to counsel, indicating the status of Defendants' compliance with said Order, and the factors that affect such compliance. The parties shall have thirty (30) days thereafter within which to submit comments on such reports, and prior to the Court taking any action, unless otherwise stated in this Order or directed by the Court,

II. Processing of Medicaid Applications (Claim 4)

6. (a) With respect to non-disability, non-foster care, non-Public Assistance Medicaid applications (hereafter, "application" or "applicant"), Defendants shall determine eligibility and mail a notice of decision within forty-five (45) days of the date of receipt of all applications.

(b) This paragraph shall apply to all applications including pending applications as of the date of entry of this Order.

(c) Provided, however, if an applicant submits the documentation and/or verification required for the District to determine the applicant's Medicaid eligibility more than 40 days after the receipt of the signed application by the District, the District shall have 5 days to process the application from the time that the applicant submits all the documentation and/or verification. The processing of an application within 5 days of the time the documentation and/or verification is submitted pursuant to this subparagraph shall be considered as timely. The processing of an application later than 5 days after the time the documentation and/or verification is submitted pursuant to this subparagraph shall be considered as untimely. This subparagraph shall only apply if the District has requested from the applicant, in writing, all the documentation and/or verification that is required and has not been submitted (a) within 5 days of the time the application is submitted; or (b) within 5 days of the applicant's submission of information or a document which first causes the need for additional documentation and/or verification.

7. Each member of the plaintiff class has a right to a decision on an application within forty-five (45) days of making the application. This right may be asserted only by individuals invoking their right to a fair hearing.

8. Defendants shall be in compliance with paragraph 6 above, unless, averaged over any four (4) consecutive month period, Defendants fail to issue decisions on at least 95% of all applications within the time period provided in paragraph 6 above.

9. No month shall be considered in determining whether Defendants are in violation of paragraphs 6 and 8 above or in calculating the termination of Section II of this Order under paragraph 74 below in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with paragraphs 6 and 8. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, a significant expansion of Medicaid eligibility criteria (based on changes in federal or District law or policy) such that new classes of persons are eligible, one or more employees having intentionally concealed from Income Maintenance Administration (IMA) management the fact that five (5) or more applications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of applications. No event shall satisfy the requirements of this paragraph unless

Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

10. (a) Defendants shall have the right to suspend the provisions of paragraphs 6 and 8 during the initial implementation of the State Children's Health Insurance Program (SCHIP). No month during which the provisions of paragraphs 6 and 8 are suspended may be used to justify termination of Section II of this Order under paragraph 74. Defendants may exercise this right for one continuous period at any time during the first twelve (12) months of the implementation of the SCHIP program. This paragraph shall not be applicable unless Defendants notify Plaintiffs within 30 days of the time the SCHIP program begins to be implemented and by the last day of the month as to which Defendants begin the suspension period.

(b) This paragraph discusses the SCHIP program solely with relation to its impact on Defendants' obligation to process Medicaid applications of presently recognized members of the plaintiff class within 45 days of submission. This Order is not intended to address, and does not decide, whether children receiving medical services under the SCHIP program are, or are not, members of any of the plaintiff sub-classes in this litigation. If Plaintiffs believe that applicants for or recipients of services

under the SCHIP program are members of one or more of the plaintiff sub-classes, Plaintiffs may file a motion with the Court for a determination of this issue.

11. The 95% and 98% standards in paragraphs 8 above and 12 below shall be calculated each month on the basis of the total number of cases decided (i.e., approved or denied) in the month. The ratio shall be computed in the following manner: (number of cases decided in accordance with paragraph 6 above or paragraph 12 below) divided by (total number of cases decided in the month).

12. Any application pending on the 46th day after receipt by Defendants or on the 6th day after the applicant completes submission of all information reasonably requested by Defendants no more than five (5) days after the initial application or within five (5) days of the applicant's submission of information or a document which first causes the need for additional documentation and/or verification, whichever is later, shall receive an eligibility determination on the 46th day, or the 6th day, whichever is applicable. If an application is denied, Defendants shall inform Plaintiffs of the name and case number and shall state the reason for denial within thirty (30) days of the due date of the report required by paragraph 16 below. Defendants shall not be in violation of this paragraph so long as 98% of the applications receive eligibility determinations by the 60th day. Defendants shall not be in violation of this paragraph in any month in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with this paragraph. An "event beyond

the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, a significant expansion of Medicaid eligibility criteria (based on changes in federal or District law or policy) such that new classes of persons are eligible, one or more employees having intentionally concealed from IMA management the fact that five (5) or more applications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of applications. In such an event, such a month shall not be considered in determining compliance with this paragraph or the termination of Section II of this Order under paragraph 74 below. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

13. In determining compliance under paragraphs 8 and 12 above, the following cases shall not be included:

(a) Spend down cases, meaning cases in which there has been a timely denial because the applicant is over-income for Medicaid and there is subsequent activity in the case relating to Defendants' determination whether the applicant has submitted

adequate documentation to qualify for Medicaid under the spend down program. The initial determination on such applications shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above;

(b) Reopened cases where there has been a timely denial of a Medicaid application because of the applicant's failure to submit by the 45th day information or documents requested by Defendants in writing no later than five (5) days after the date of the application and there is subsequent activity in the case relating to whether the information or documents submitted by the applicant after the 45th day are adequate to qualify the applicant for Medicaid. The initial determination on the application and any subsequent application shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above;

(c) Family members added to an existing case where there has been a timely approval of some members of a household for Medicaid and there is a subsequent addition of one or more additional individuals to the household. The initial determination on the household's application and any subsequent application filed for other members of the household shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above; and

(d) Applicants for long-term care Medicaid who are receiving care in a nursing home or hospital, and for whom a delay in an application decision will not result in the applicant being

denied medical services. This subparagraph shall only apply if Defendants have requested that the nursing home and/or hospital in which the applicant is receiving care not seek payment from Medicaid applicants while their Medicaid applications are pending. Defendants' request to nursing homes and hospitals may include a disclaimer by Defendants stating that Defendants do not accept liability for any Medicaid applicant's medical expenses until the application is approved. All other applicants for long-term care Medicaid who are not at the time of their application in a nursing home or hospital shall be included in determining compliance under paragraphs 8 and 12 above.

14. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), and in all written notices to applicants identifying information or documentation to be supplied to Defendants, a conspicuous statement that (a) Defendants must approve or disapprove the application within forty-five (45) days, and that (b) if the applicant has not received notice of approval or disapproval by the 45th day, the applicant is to call the social service worker to whom the application was submitted (i.e., the SSA or the SSR) and/or the SSR's supervisor and request that such a determination be made.

15. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a

Department of Human Services service center), and in all written notices to applicants identifying information or documentation to be supplied to Defendants, a conspicuous statement that, if the eligibility of the applicant is not determined within forty-five (45) days of the application, the applicant may obtain free legal assistance concerning the application by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

16. Beginning no later than the 15th day of the first full month following the month in which this Order is entered and on the 15th day of each month thereafter, Defendants shall submit to the Monitor and Plaintiffs' counsel, a monthly report or reports for each DHS service center (reporting the Multinational Unit separately as long as it exists), listing in alphabetical order by name, case number, and Medicaid identification number (if any), the date each application was received, the date each application was approved or denied, the number of days between the date of receipt of the application and the date of approval or denial, and all applications that were still pending more than forty-five (45) days after the date of application on the last day of the month. In addition, the report shall set forth in composite form the total number of applications received in the month, the number approved in the month, and the number denied in the month.

III. Processing of Medicaid Recertifications (Claim 5)

17. With respect to non-Public Assistance, non-foster care, Medicaid recipients (including the disabled) (hereafter, "recipient"), beginning no later June 1, 1999, Defendants shall not terminate a recipient's eligibility for Medicaid benefits unless Defendants have sent the recipient a recertification form at least fifty-five (55) days prior to the end of the eligibility period, and either: (a) the recipient has not returned the recertification form and Defendants have sent an advance termination notice at least twenty-five (25) days prior to the end of the recipient's eligibility period; or (b) some or all of the information and/or documentation requested by Defendants in writing has not been received by Defendants after the recipient has been given a minimum of ten (10) days to produce the information or documentation requested and Defendants have determined to deny continued eligibility for Medicaid and a notice of termination of benefits has been mailed to the recipient fifteen (15) days prior to the actual termination of benefits; or (c) the recertification form, information and documentation have been received by the last day of the eligibility period and Defendants have determined that the recipient is no longer eligible for Medicaid and a notice of termination of benefits has been mailed to the recipient fifteen (15) days prior to the actual termination of benefits.

18. Each member of the plaintiff class has a right not to have Medicaid benefits terminated without advance notice and an

opportunity for a hearing. This right may be asserted only by individuals invoking their right to a fair hearing.

19. Defendants shall be in compliance with paragraph 17 above, unless, averaged over any four (4) consecutive month period, Defendants fail to process at least 95% of all recertifications in accordance with the requirements of paragraph 17.

20. No month(s) shall be considered in determining whether Defendants are in violation of paragraphs 17 and 19 above or in calculating the termination of Section III of this Order under paragraph 75 below in which an event beyond the reasonable control of Defendants causes Defendant to fail to comply with paragraph 17 and 19. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, one or more employees having intentionally concealed from IMA management the fact that five (5) or more recertifications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of recertifications. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days

of the end of the reporting month affected by the event, whichever is sooner.

21. The 95% standard in paragraph 19 above shall be calculated each month on the basis of the total number of recertification cases in which a determination was made (i.e., approved or terminated) in the month. The ratio shall be computed in the following manner: (number of cases in which a determination was made after both (1) a timely recertification form has been sent to the recipient and (2) a timely and accurate notice of termination or continued eligibility has been sent) divided by (the total number of cases in which a determination was made in the month).

22. If, after the conclusion of the work of Maximus Inc. required by paragraph 24 below and Defendants, having made all reasonable efforts for one year thereafter to comply with the standard set forth in paragraph 19 above, calculated by the method set forth in paragraph 21 above, have not achieved the standards set forth in those paragraphs, Defendants may move the Court to set an alternate standard to show compliance. Defendants shall have the burden to show that the standard set forth in paragraph 19, calculated by the method set forth in paragraph 21, cannot be achieved by all reasonable efforts.

23. No later than February 1, 1999, Maximus Inc. shall conduct quality control testing to ensure that the computer changes that Defendants have promised to make and that are required to implement this portion of the Order are fully operational and

provide a report of their conclusions to Plaintiffs and the Monitor. The report of Maximus Inc. shall report in detail the type of quality control testing done and the results of the testing. In the event that Maximus Inc. does not complete the testing and provide a report to Plaintiffs and the Monitor by February 1, 1999, the Monitor shall no later than March 1, 1999, start conducting independent quality control testing to ensure that the computer changes that Defendants have promised to make and that are required to implement this portion of the Order are fully operational. The Monitor shall use his or her best efforts to engage a consultant who is familiar with ACEDS or a similar public benefits computer system. The Monitor shall report in detail the type of quality control testing done and the results to the Court and counsel for the parties. Provided however, that the parties intend to conduct a meeting in good faith after the execution of this Order for the purpose of eliminating the need for and cost of the study required in this paragraph. If the parties agree that the study required by this paragraph is not necessary in light of their meeting, they will execute a subsequent agreement to be approved by the Court eliminating this paragraph.

24. Defendants have entered a contract with Maximus Inc., pursuant to which Defendants have instructed Maximus Inc. that Maximus Inc. must study and prepare a report and recommendations concerning the actions Defendants will need to take in processing recertifications to comply with paragraph 19 above. Defendants shall ensure that the work of Maximus Inc. is completed on an

expedited basis and a report and recommendations submitted no later than February 1, 1999. Defendants shall provide Plaintiffs' counsel with a copy of the report and recommendations once completed within fifteen (15) days of receipt from Maximus Inc.

25. Defendants shall include in a written notice to all Medicaid applicants, and in a written notice to all Medicaid recipients at the time of recertification, a conspicuous statement that, if the recipient returns the recertification form and all required information and documentation prior to the end of the eligibility period, the recipient's eligibility must be continued uninterrupted until the recipient receives a notice of termination that states Defendants' determination that the recipient is no longer eligible for Medicaid. The notice shall also include information about other rights such as the right to a hearing, if there is an adverse determination on eligibility.

26. The notice required in paragraph 25 above shall include a conspicuous statement that if the recipient's Medicaid eligibility is terminated without advance notice or after notice that erroneously states that the recipient did not return the recertification form or all information and/or documentation requested, the applicant may obtain free legal assistance by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

27. On the 15th of each month, Defendants shall submit to the Court, the Monitor, and Plaintiffs' counsel, a monthly report for each DHS service center handling recertifications (reporting the Multinational Unit separately as long as it exists). The monthly report shall include the following information for each recipient whose Medicaid eligibility was determined as a result of a recertification (i.e., approved or terminated) during the month: (a) in alphabetical order, the name, address, telephone number (if known), and Medicaid identification number for each such recipient; (b) the date any recertification form(s) was mailed to the recipient; (c) the date the recipient's then current eligibility period began; (d) the date the recipient's then current eligibility period expires; (e) the date that the recipient submitted the recertification form and all necessary verification and/or documentation; (f) the date that Defendants determined (i.e., approved or terminated) the recipient's eligibility; and (g) the date that any advance notice(s) of termination or continued eligibility was mailed to the recipient. In addition, the report shall set forth in composite form the total number of recertification forms received back from recipients in the month, and the number approved in the month, and the number denied in the month.

28. Defendants have contracted with Maximus Inc. to issue a report and recommendations concerning the production of the reports required by paragraph 27 above. Upon receipt and review of that report, Plaintiffs agree to engage in good-faith negotiations with

Defendants concerning whether the reports required by paragraph 27 can be made less burdensome to Defendants while still meeting Plaintiffs' legitimate information needs. If Defendants propose a modification to the reports required by paragraph 27 and the parties cannot agree, Defendants may submit the matter to the Court for resolution. Defendants shall have the burden of proof to show that Plaintiffs' need for the particular information in order to enforce this Order is outweighed by the costs of providing such a report.

IV. Eligibility Verification System (EVS)

29. Defendants shall not operate the Eligibility Verification System (EVS) in a manner that causes eligible Medicaid recipients' benefits to be terminated, suspended, or interrupted without advance notice or an opportunity for a hearing. Defendants shall instruct its providers that they must call the EVS backup system if EVS reports ineligibility. Defendants shall state in the Rights and Responsibilities sheet that providers have been so instructed.

30. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), in notices of eligibility, and in recertification forms or accompanying written materials, a conspicuous statement that, if, during a period when they are eligible for Medicaid, EVS informs the recipient or a provider is informed that the recipient is not eligible for

Medicaid, the recipient may obtain free legal assistance by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. Defendants shall provide this same information, at least annually, to all Medicaid providers and require the providers to provide Medicaid recipients with this same information if EVS reports them as ineligible for Medicaid during a period when they are eligible. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

31. On the 15th of each month, Defendants shall submit to the Monitor, and Plaintiffs' counsel, a monthly report of all systemic problems experienced by EVS, including but not limited to, breakdowns and failures of the system to provide needed information in a timely manner.

32. Defendants shall conduct quality control of the EVS system and make monthly reports to the Monitor and Plaintiffs' counsel regarding the results of the quality control. Defendants shall be deemed in compliance with this portion of this Order only if they can establish through a statistically valid sampling method that the verification system, including both EVS and the back-up system, accurately confirms the eligibility status of at least 98% of all requests for eligibility verification in any given month.

33. Defendants shall maintain a consistently accurate back-up system that can be used when EVS and/or its replacement states that a person is ineligible. The back-up system shall include a telephone information service that shall provide Medicaid

recipients and providers with all eligibility information provided by EVS or its replacement, twenty-four (24) hours a day, three hundred and sixty-five (365) days a year. Defendants shall direct providers to use the back-up system whenever EVS reports ineligibility. Defendants shall notify recipients of the existence and purpose of the back-up system and its telephone number in the notices approving the recipient's eligibility and recertification. Defendants shall notify providers of the existence and purpose of the back-up system and its telephone number in a Transmittal at least annually.

34. If the reports submitted by Defendants under paragraph 32 above show that the verification system, including both EVS and the back-up system, accurately confirms the eligibility status of at least 98% of all requests for eligibility verification for twenty-two (22) of twenty-four (24) consecutive months, and accurately confirms the eligibility status of at least 95% of all requests for each of the other two (2) months, Defendants shall no longer be required to submit the reports required by paragraphs 31 and 32 above. These consecutive months shall begin with the first report showing at least 98% accuracy, including any such months before the effective date of this Order. However, after Defendants cease producing such reports on a monthly basis, Plaintiffs may choose one month per calendar year for Defendants to produce the reports required by paragraphs 31 and 32. If the single month's report shows compliance with the 98% standard, no further reports may be required until the subsequent calendar year. If the single report

shows that the 98% standard is not being met, Defendants shall produce the monthly reports required by paragraphs 31 and 32 until Defendants have shown six (6) consecutive months of compliance with the 98% standard. Defendants shall not be in violation of this paragraph in any month in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with this paragraph, such as a central computer breakdown. In such an event, such a month shall not be considered in determining compliance with this paragraph or the termination of this paragraph under paragraph 76 below. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

35. If Defendants fail to meet the deadlines or other requirements set forth in paragraphs 29, 30 and 32-34 above, Defendants shall submit to Plaintiffs, within fourteen (14) days, a report specifically describing the failure, the reasons for the failure, a schedule for correcting the failure, and the measures that will be taken to prevent the failure in the future. If Defendants fail to submit the report or Plaintiffs notify the Monitor that they are not satisfied with the report, the Monitor shall study the reasons for such failure and possible remedies and submit recommendations to the Court for implementation by

Defendants. The parties shall have thirty (30) days thereafter within which to submit comments on the Monitor's recommendations, and prior to the Court taking any action.

V. EPSDT Services (Claim 6)[1/]

36. Defendants shall provide or arrange for the provision of early and periodic, screening, diagnostic and treatment services (EPSDT) when they are requested by or on behalf of children.

37. Within thirty (30) days after the effective date of each contract, Defendants shall ensure that the Managed Care Organizations (MCO's) with which it contracts to provide EPSDT services to children maintain a tracking system for all children that shows:

(a) by name and Medicaid identification number, whether each child has obtained the screens, as defined in 42 U.S.C. 1396d(r)(1)(B), and laboratory tests set forth in the District of Columbia periodicity schedule issued in accordance with 42 U.S.C. 1396d(r)(1)(A)(i),1396d(r)(2)(A)(i),1396d(r)-(3)(A)(i), 1396d(r)(4)(A)(i), at the times set forth in that schedule, including lead blood screens, mental health screens, dental services, and vision and hearing tests (hereafter "screens and laboratory tests");

(b) by name and Medicaid identification number, whether each child has received age-appropriate immunizations in accordance with the immunization schedule of the Centers for Disease Control

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1/The following provisions in this Section of the Order shall relate to all Medicaid recipients under the age of twenty-one (21) (hereafter "child" or "children").

Advisory Committee on Immunization Practices (hereafter "immunization schedule");

(c) by name and Medicaid identification number, whether and on what date(s) each child has been referred for corrective treatment determined to be necessary as a result of an EPSDT screen or laboratory test;

(d) by name and Medicaid identification number, whether and on what date each child referred for corrective treatment as a result of an EPSDT screen or laboratory test has obtained the corrective treatment for which the child was referred;

(e) by name and Medicaid identification number, the date on which each of the outreach activities set forth in paragraphs 38 and 39 below were undertaken with respect to the child.

38. The contracts that Defendants are entering into with MCO's in 1998 require that the MCO's:

> shall conduct outreach activities to assist enrollees make and keep EPSDT appointments for eligible children. The outreach activities shall include every reasonable effort, including telephone calls, scheduling of appointments for recipients, mailed reminders and personal visits, to contact parents, guardians of children, or the children themselves, if appropriate, based on the child's age, who are due for, or who have failed to keep appointments for, EPSDT screens and laboratory tests set forth in the District's periodicity schedule, immunizations, or follow-up treatment to correct or ameliorate a defect identified during an EPSDT screen or laboratory test, or have otherwise not obtained EPSDT screens[,] laboratory tests, immunizations, follow-up treatment or other services, in order to assist them to obtain such services.

Defendants shall monitor these activities and enforce these contractual provisions in order to assure that they are fully carried out.

39. Defendants shall require all MCO's in all contracts entered, renewed, extended and/or modified after January 1, 1999, to make every reasonable effort to contact parents, guardians of children, or the children themselves, if appropriate, based on the child's age, who are due for, or who have failed to keep appointments for, EPSDT screens and laboratory tests set forth in the District of Columbia periodicity schedule issued in accordance with 42 U.S.C. 1396d(r)(1)(A)(i), 1396d(r)(2)(A)(i), 1396d(r)(3)(A)(i), 1396d(r)(4)(A)(i), immunizations, or follow-up treatment to correct or ameliorate a defect identified during an EPSDT screen or laboratory test, or have otherwise not obtained EPSDT screens, laboratory tests, immunizations, follow-up treatment or other services, in order to assist them to obtain such services. Such contracts shall provide that "every reasonable effort" shall include, at a minimum, a telephone call or mailed reminder prior to the due date of each visit, scheduling of appointments for recipients, and, in the case of a missed appointment, a telephone call or mailed reminder for the first missed appointment and, if there is no response, a personal visit to urge the parent or guardian to bring the child for his or her EPSDT appointment. The contracts may provide that a personal visit need not be made if the MCO determines that the specific neighborhood or apartment building is dangerous for such a visit during the particular time of day involved and the MCO retains documents that state the specific reasons why no personal visit was made. The contracts need not (a) require the MCO's to make useless efforts to contact Medicaid

recipients using these methods, such as telephone calls need not be made if it is known that the recipients have no telephone or mailings need not mailed or personal visits attempted if an address for the recipient cannot be ascertained after reasonable efforts to obtain it, or (b) preclude the MCO's from taking other actions to contact Medicaid recipients. The contracts shall also require MCO's to maintain records showing the information set forth in paragraph 37 above and the efforts made to assist recipients to obtain EPSDT services that are set forth in this paragraph. Plaintiffs' counsel shall have access to these records through Defendants' counsel to ensure that MCO's are complying with this paragraph. While these requirements shall be explicitly set forth in the contract, the contract need not include the exact language of this paragraph. Defendants shall monitor these activities and enforce these contractual provisions in order to ensure that they are fully carried out.

40. If the definition of "every reasonable effort" set forth in paragraph 39 above proves infeasible or ineffective after two years under contracts including that definition, either party may inform the other party and the parties shall attempt in good faith to agree on an alternate definition. If the parties' efforts are not successful after thirty (30) days, either party may bring the issue to the Monitor. The Monitor shall report to the Court on the issue. Each party shall have thirty (30) days from the date of the Monitor's report to comment before the Court takes any action.

41. Defendants shall ensure that the MCO's train all EPSDT providers, during the first year of the contract and at least biannually thereafter, about the current requirements for EPSDT and shall develop a monitoring program for the purpose of ensuring, on at least a biannual basis, that each physician providing EPSDT services has the necessary equipment and knowledge to perform such services in accordance with standard medical practice. Defendants shall send any HCFA directions or guidance relevant to an MCO's obligation to implement the EPSDT program to each MCO within a reasonable time after receipt, not to exceed thirty (30) days unless unusual circumstances (such as the need to seek clarification from HCFA) make such transmittal in thirty (30) days unreasonable. Defendants shall direct each MCO to provide such information, when relevant, to each EPSDT provider within the MCO's network within ten (10) days of receipt by the MCO. Defendants shall report the activities of the monitoring program to the Court, the Monitor and Plaintiffs' counsel, annually, with the first report due no later than June 1, 1999.

42. Defendants shall provide each physician participating in the EPSDT program with a list of specialists to whom referrals may be made for screens, laboratory tests and corrective treatment. Defendants shall operate a telephone information service that functions during normal business hours to respond to inquiries from providers and EPSDT recipients or their parents or guardians concerning EPSDT referrals.

43. The contracts that Defendants are entering into with MCO's in 1998 provide that:

(a) the MCO shall meet a 75% participant ratio, as defined by the HCFA State Medicaid Manual, Section 5360.B and computed in accordance with the HCFA State Medicaid Manual, Section 2700.4 (hereafter "participant ratio") for 1998 for all children enrolled with the MCO.

(b) the MCO shall meet an 80% participant ratio for 1999 for all children enrolled with the MCO.

(c) Each screen, laboratory test and immunization must be conducted within sixty (60) days of its due date, based on the child's age, under the periodicity schedule or immunization schedule for all children over the age of two (2) years and within thirty (30) days of its due date for all children under the age of (2) two years.

44. The contracts that Defendants are entering into with MCO's in 1998 further provide that:

> b. If Provider fails to meet or show progress toward meeting the EPSDT performance standards in paragraph "a" of this section or ensure that children have their age-appropriate screens updated for missed opportunities, the District shall take any or all of the following actions (depending on the extent of the failure to comply or to demonstrate progress with the standards):
>
> (1) require the Provider to develop and implement a corrective action plan, that is approved by the District and is designed to increase Provider's EPSDT participation ratio;

(2) require the Provider to utilize the Department's EPSDT case management program; or

(3) withhold an amount from the Provider's payment, pursuant to Article 11, section A.3 at a rate of $45 for each enrollee that is required to be added to the numerator in Provider's EPSDT participation ratio to comply with the performance standards in paragraph "a" of this section.

If any MCO fails to comply with the participant ratio percentage set forth in paragraph 43 above, Defendants shall take the following actions:

(a) In fiscal year 1998, if the MCO has a participant ratio of less than 65%, it shall be required to develop and implement an effective corrective action plan;

(b) In fiscal year 1999, if the MCO has a participant ratio of less than 70%, it shall be required to develop and implement an effective corrective action plan and, if the MCO has a participant ratio of less than 60%, it shall also be required to pay Defendant at a rate of $45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 70% requirement in the contract.

Plaintiffs' counsel shall have the opportunity to comment within 15 days of their receipt of any corrective action plan before approval by Defendants. Defendants shall enforce these contractual requirements and the corrective action plans.

Defendants shall inform the MCO of the date that they have provided the corrective action plan to plaintiffs. Plaintiffs

shall keep any such corrective action plans confidential for a period of 15 days after receipt. During those 15 days, if the MCO believes that the corrective action plan contains confidential information, it may move this Court for an Order that the confidential portions of the corrective action plan be subject to a protective order. If such a motion is made by the MCO, plaintiffs shall keep the corrective action plan confidential until the resolution of the motion. The foregoing procedures concerning claims to confidentiality by MCO's do not affect defendants' obligations under the District of Columbia Freedom of Information law, D.C. Code §1-1521, et seq.

45. In all contracts entered, renewed, extended and/or modified with MCO's on or after January 1, 1999, Defendants shall, at a minimum, require the MCO's:

(a) to provide each EPSDT screen, laboratory test and immunization within sixty (60) days of its due date, based on the child's age, under the periodicity schedule or immunization schedule for all children over the age of two (2) years and within thirty (30) days of its due date for all children under the age of two (2) years.

(b) to meet an 80% participant ratio for fiscal year 1999 and thereafter for all children enrolled with the MCO.

(c) In fiscal year 2000, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 75% and, if the MCO has a participant ratio of less than 65%, it shall also be required to pay Defendants at least at

a rate of $45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

(d) In fiscal year 2001, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 80% and, if the MCO has a participant ratio of less than 70%, it shall also be required to pay Defendants at least at a rate of $45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

(e) In fiscal year 2002 and any year thereafter, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 80% and, if the MCO has a participant rate of less than 75%, it shall also be required to pay Defendants at least at a rate of $45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

Plaintiffs' counsel shall have the opportunity to comment on any corrective action plan before approval by Defendants. Defendants shall enforce these contractual requirements and the corrective action plans.

(f) If in soliciting bids or negotiating modifications to the contracts described in this paragraph, Defendants cannot secure such contracts or such modifications without an increase in cost above the federal upper payment limit for capitation rates as a result of the requirements set forth in this paragraph and

paragraph 39, Defendants may move the Court to modify the requirements set forth in this paragraph and in paragraph 39. In making any such motion, Defendants shall bear the burden to show that the requirements of this paragraph and paragraph 39 are the provisions which caused the upper payment limit to be exceeded.

46. Defendants shall comply with the HCFA State Medicaid Manual, Section 2700.4, in completing the HCFA Form 416. Defendants shall ensure that MCO's comply with the HCFA State Medicaid Manual, Section 2700.4, in providing information to be used in the HCFA Form 416 relating to whether the participant ratios in paragraphs 43, 44, and 45 above have been complied with. Defendants shall include a provision in the contracts with MCO's that requires the MCO's to submit to Defendants adequate information for Defendants to produce the reports required by paragraph 47 below. Defendants shall use an independent party to verify annually the data from each MCO used to compile the HCFA Form 416 used by Defendants to determine the participant ratios in paragraphs 43, 44, and 45. Defendants shall provide the results of the verification and the data for each MCO to Plaintiffs' counsel.

47. Defendants shall provide quarterly reports to the Court, the Monitor, and Plaintiffs on the provision of EPSDT services. The reports shall contain the following information for each MCO:

(a) Number of individuals eligible for EPSDT enrolled with the managed care organization (MCO). The total unduplicated number of individuals under age 21 determined to be eligible for Medicaid, distributed by age (as defined in the line 1 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4). Unduplicated means that an eligible individual is reported only once,

although he or she may have had more than one period of eligibility during the reporting period.

(b) Number of individuals receiving at least one initial or periodic screening service from the MCO. The unduplicated count of individuals, distributed by age, who received one or more documented initial or periodic screenings (as defined in the line 7 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4) during the quarter.

(c) Actual Number of Initial and Periodic Screening Services. The number of initial and periodic EPSDT child health screening examinations during the quarter (as defined in the line 10 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

(d) Number of individuals referred for corrective treatment. The unduplicated count, distributed by age, of individuals who, as the result of at least one health problem identified during an EPSDT child health screening, excluding vision, dental, and hearing services, were scheduled for another appointment with the screening provider or referred to another provider for further needed diagnostic or treatment service (as defined in the line 12 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4). This does not include correction of health problems during the screening examination or referrals for vision, dental, and hearing services.

(e) Number of individuals receiving corrective treatment. The unduplicated count, distributed by age, of EPSDT-eligible individuals who received corrective treatment from a specialist.

(f) Number of individuals receiving vision assessments. The unduplicated count, distributed by age, of individuals who received an assessment to determine the need for diagnosis and treatment for defects in vision (as defined in the line 13 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

(g) Number of individuals receiving dental assessments. The unduplicated count, distributed by age, of individuals who received preventive dental services (as defined in the line 14 instructions for the HCFA Form 416 set forth at HCFA State Medicaid Manual, Section 2700.4).

(h) Number of individuals receiving hearing assessments. The unduplicated count, distributed by age, of individuals who received an assessment to determine the need for diagnosis and treatment for defects in hearing (as defined

in the line 15 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

The first report shall be due on October 1, 1998, and shall cover April 1, 1998, through June 30, 1998. Thereafter, reports shall be due one hundred and twenty (120) days after the conclusion of each quarter. In addition, Defendants shall produce to Plaintiffs the HCFA Form 416 for each year within fourteen (14) days of its submission to the federal government.

48. (a) The covenants, corrective action plans, and penalties set forth in paragraphs 44 and 45 above are intended as the actions reasonably required of Defendants for assuring that the MCO's, as far as possible, will attain a participant ratio of 75% for 1998 and 80% for 1999 and thereafter. However, the parties and the Court recognize that they do not have sufficient information and experience to be certain that these ratios can be attained, even if the MCO's and Defendants take such actions. It may be that the participant ratios required in paragraphs 43(a) and (b) and 45(b) are attainable through the enforcement mechanisms prescribed in paragraphs 44 and 45, but they may be unattainable despite such enforcement mechanisms. This paragraph is therefore intended to provide a mechanism to determine whether the actions of Defendants and the MCO's under this Order constitute a reasonable effort, consistent with this Order, to achieve the participant ratios required under the MCO contracts and this Order. When such participation deficits occur, the Court will scrutinize Defendants' performance in achieving the specified participant ratios if, but only if, the participant ratios achieved are under 60% in 1999, 65%

in 2000, 70% in 2001, 75% in 2002 and 80% in 2003 and each year thereafter.

(b) Defendants shall calculate the participant ratio for fiscal year 1998, which shall become the base year. If, in any subsequent year, the percentage ratio for that year set forth in subparagraph (a) above is not met and the ratio is also less than the 1998 base year ratio plus 5% for each subsequent year (but not more than 80%) (e.g., for 2000, the figure is the 1998 participant ratio, plus 10%), Defendants shall by April 1 of the following year, provide a detailed explanation to Plaintiffs of (i) the actions taken by the MCO's in 1998 and subsequent years through the year in issue to meet the relevant participant ratio in paragraphs 43(a) and (b) and 45(b), and (ii) whether it would be reasonable and effective to direct Defendants to require the MCO's to take further actions that are consistent with the MCO contracts.

(c) If Plaintiffs are satisfied with Defendants' explanation, Defendants shall be deemed in compliance with the participant ratio for that year. If Plaintiffs are not satisfied with Defendants' explanation, they may prepare a written response and present it, along with Defendants' explanation, to the Monitor. The Monitor will then consult with the parties and prepare a report to the Court addressing whether it would be reasonable and effective to direct Defendants to require the MCO's to take further actions consistent with the MCO contracts. The Monitor's report shall be due within 30 days of the issue being presented to the Monitor.

(d) The parties shall have thirty (30) days after submission of the Monitor's report to the Court within which to submit comments on such report. If the Court determines that it would be reasonable and effective, in order to achieve a participant ratio meaningfully higher than in the previous year, to direct Defendants to require the MCO's to take further actions consistent with the MCO contracts, the Court shall determine what relief, if any (other than contempt sanctions), shall be afforded to Plaintiffs. If, on the other hand, the Court determines that directing further actions consistent with the MCO contracts would be either unreasonable or ineffective in achieving a participant ratio meaningfully higher than in the previous year, Defendant shall be deemed in compliance with the participant ratio for that year. However, in this latter event, if the Court concludes that there are further actions that would be reasonable and effective in achieving such a meaningfully higher participant ratio, but that such actions are unavailable under the terms of the MCO contracts, Plaintiffs may, upon motion, seek further relief from the Court that Defendants, under the circumstances, could reasonably be expected to provide.

49. Defendants' periodicity schedule shall require dental services at least annually for children age six (6) through twenty (20).

50. Defendants shall follow the federal requirements set forth in the HCFA State Medicaid Manual, Section 2700.4, in reporting line 12 on the HCFA Form 416 concerning referrals or

comparable provisions in future forms for treatment of conditions discovered in the course of EPSDT screens and laboratory tests.

51. Beginning no later than the date of entry of this Order, Defendants shall offer scheduling and transportation assistance prior to the due date of each eligible child's periodic screening, laboratory tests and immunizations as required by the HCFA State Medicaid Manual, Section 5150, when this assistance is requested and necessary.

52. Beginning no later than the date of entry of this Order, Defendants shall assure that children and their parents or guardians shall be provided assistance, when requested and necessary, with transportation to EPSDT appointments.

53. Beginning no later than the effective date of each of the MCO contracts Defendants shall ensure that the MCO's provide case management services, as described in the HCFA State Medicaid Manual §4302 and as defined by 42 U.S.C. 1396n(g)(2), to children with a need for such services under the EPSDT program. No later than January 15, 1999, and no later than July 15, 1999, Defendants shall report to the Monitor and Plaintiffs' counsel concerning the implementation of case management services to children with a need for such services under the EPSDT program. Defendants shall consider in good faith any comments by Plaintiffs' counsel concerning its provision of case management services under the EPSDT program.

VI. EPSDT Notice (Claim 7)[2/]

54. Defendants shall effectively inform all pregnant women, parents, child custodians, and teenagers who are sui juris and who have been determined to be eligible for Medicaid benefits, including individuals who are blind or deaf, or who are illiterate, of the availability of early and periodic, screening, diagnostic, and treatment services (hereafter "EPSDT") and the need for age-appropriate immunizations against vaccine-preventable diseases. Notice shall be provided to all such individuals, to all applicants for Medicaid, and to all Medicaid recipients, at least annually, in writing. In addition, oral notice must be given at least annually if such individual meets with a social service representative. The oral and written notice shall use clear and non-technical language, and shall be designed to effectively inform EPSDT-eligible individuals about the benefits of preventive care, the services available under the EPSDT program, where and how to obtain those services, the cost-free nature of the services, and the availability of necessary scheduling and transportation assistance.

55. Defendants shall establish and maintain a helpline that explains EPSDT services in Spanish which is available whenever no Spanish-speaking DHS employee is available to give an oral explanation and the person to whom notice is to be given understands only Spanish.

2/The following provisions in this Section of the Order shall relate to all Medicaid recipients under the age of twenty-one (21) (hereafter "child" or "children").

56. Defendants shall develop a program, to be implemented by February 1, 1999, to provide adequate notice about the EPSDT program to eligible persons who are blind or deaf, and who cannot read or cannot understand English. Defendants submitted the plan to the Court, the Monitor and Plaintiffs' counsel on March 16, 1998, and Plaintiffs have provided Defendants and the Monitor with their response to the Plan. If the parties are unable to agree on the terms of the Plan and its implementation, the Monitor shall evaluate the Plan and submit a report on the Plan and its implementation to the Court and counsel. The parties shall have fifteen (15) days thereafter within which to submit comments on the report, and prior to the Court taking any action.

57. Defendants shall require all providers of Medicaid services to give all pregnant women, parents, child custodians, and teenagers who are sui juris, and who have been determined to be eligible for Medicaid benefits, including individuals who are blind or deaf, or who are illiterate, written material describing EPSDT services in simple terms when they first visit the provider and on subsequent visits, unless the provider has given the recipient such material within the preceding year. Defendants shall also require all providers of Medicaid services to explain the EPSDT program orally to such recipients at least annually to all recipients who use Medicaid services during the year, except that so long as the Defendants' periodicity schedule requires only biannual EPSDT screening for children over the age of six (6), such children, and/or their parents or guardians, need only be orally informed

about EPSDT biannually. Defendants shall require providers to call the Spanish helpline described above whenever the person to whom notice is to be given understands only Spanish.

58. The written and oral notices set forth in paragraphs 54, 55 and 57 above shall include:

(a) An explanation of all EPSDT medical services, including screens, laboratory tests, immunizations and corrective treatment;

(b) An explanation of the importance of these services, and a strong recommendation that the services be utilized;

(c) An explanation of the right of the child to follow-up treatment to correct or ameliorate any medical need identified during a screen or laboratory test;

(d) An explanation of the right to scheduling assistance in order to make EPSDT appointments and the procedures for obtaining such assistance; and

(e) An explanation of the right to transportation assistance and the procedures for obtaining such assistance for EPSDT appointments.

In addition, Defendants shall provide EPSDT eligible applicants at the time of application and at least annually thereafter, a pocket-sized schedule of EPSDT screens, laboratory tests and immunizations.

59. Beginning no later than November 15, 1998, Defendants shall develop and implement effective coordination of EPSDT notice and outreach with the Department of Health, the District of

Columbia public school system, Headstart programs, the Women, Infants and Children nutrition program, public housing programs, Title XX programs, and the District's Part H early intervention program. The plan for coordination shall be provided to the Court, the Monitor and Plaintiffs' counsel within ten (10) days of its completion. The Monitor shall submit, within fifteen (15) days thereafter, an evaluation of the coordination plan, and shall monitor its implementation.

60. Plaintiffs may submit to the Court at any time after October 15, 1998, information concerning the effectiveness of EPSDT notice in the District of Columbia. If the Court determines that Plaintiffs have raised a substantial issue as to such effectiveness, the Court shall request the Monitor to submit a report on appropriate measures to improve such effectiveness, including the need for, the feasibility and mechanics of, and the cost of a statistically valid study of the effectiveness of EPSDT notice in the District of Columbia. The parties shall have thirty (30) days after the submission of the Monitor's report within which to submit comments on such report, and prior to the Court taking any action. "Effectiveness of EPSDT notice" as used in this paragraph shall have the same meaning as the phrase "to inform effectively all EPSDT eligible individuals (or their families) about the EPSDT program" as set forth in 42 C.F.R. 441.56(a).

VII. Reimbursement Procedure for Class Members' Expenses

61. Defendants' Medicaid State Plan shall allow for corrective payments to Medicaid recipients who have incurred out-

of-pocket medical expenses that, but for Defendants' error, should have been paid by Medicaid.

62. Defendants shall provide corrective payments to Medicaid recipients who have incurred out-of-pocket medical expenses that should have been paid by Medicaid to all current and future Medicaid recipients and all those who were Medicaid recipients or were eligible for Medicaid at any time since March 2, 1990. Reimbursement of class members shall be made when the class member presents reasonable and reliable documentation or other evidence of their out-of-pocket expenses.

63. In an Order dated September 15, 1997, after considering the Monitor's report and the positions of the parties, the Court issued a Reimbursement Procedures Order setting forth the procedures for reimbursing Medicaid recipients for out-of-pocket expenses incurred since March 2, 1990. In an Order Partially Modifying the Reimbursement Procedures of the Amended Remedial Order of May 6, 1997, and the Reimbursement Procedures Order of September 15, 1997, entered on July 30, 1998, the Court set forth further procedures concerning reimbursement.

VIII. Monitoring Fees to Plaintiffs' Counsel

64. Plaintiffs' counsel may respond to all calls which come to their office and make reasonable inquiry to determine whether the caller is a member of the plaintiff class. If the caller is a member of the plaintiff class, Plaintiffs' counsel may provide the caller with legal assistance. The reasonable time and expenses of Plaintiffs' counsel in making such inquiry and providing such legal

assistance shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988 and applicable law interpreting that statutory provision. The hourly rate for handling the claims of individual class members shall be $75/hour, regardless of the experience level of the lawyer who performs the work. This hourly rate shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

65. Other reasonable attorney time by Plaintiffs' counsel in monitoring Defendants' compliance with this Order shall be compensated at the rate of $315/hour for the time of Bruce J. Terris and Lynn Cunningham, and $265/hour for the time of Kathleen L. Millian and Jane Perkins. Reasonable paralegal time shall be compensated at the rate of $75/hour. If attorneys other than those mentioned specifically in this paragraph perform monitoring work, the parties shall use their best efforts to agree to an hourly rate for the attorney, which shall not exceed $200/hour. These hourly rates shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

66. The rates set forth in paragraphs 64 and 65 above for Plaintiffs' monitoring of Defendants' compliance with this Order were based on compromise and the parties do not intend these rates to apply for any purpose other than those set forth in paragraphs 64 and 65. Defendants take the position that the reasonable rates for Plaintiffs' counsel are lower than those set forth in

paragraphs 64 and 65 and Plaintiffs take the position that the reasonable rates are higher.

67. Plaintiffs may make an application for monitoring fees and expenses no more frequently than every six (6) months. If the parties cannot agree on the amount of fees and expenses, Plaintiffs may make a motion to the Court thirty (30) days after submission of the fees application to Defendants. The first such application may be submitted at any time after July 1, 1998. In addition to the costs of monitoring Defendants' compliance with this Order, the first application shall include all other fees incurred in this action since January 1, 1998, excluding those specified in paragraph 69(b) below.

68. Beginning on May 15, 1997, and continuing thereafter, Plaintiffs' counsel shall provide Defendants' counsel with a monthly statement of their fees and expenses associated with monitoring Defendants' compliance with the Remedial Order.

IX. Attorneys' Fees and Expenses through December 31, 1997

69. In full settlement of all claims by Plaintiffs for attorneys' fees and expenses through December 31, 1997, except as specifically stated below, Defendants agree to pay Plaintiffs a total of $1,600,000. The Court vacates the Judgment for $1,028,059.70 entered on March 12, 1998. Of the sum of $1,600,000, $611,940.30 was paid pursuant to the Consent Judgments of September 3, 1996, and January 14, 1997, and the Judgment of March 12, 1998. Defendants agree to pay Plaintiffs the remaining $988,059.70 within forty-five (45) days of the date of entry of the Consent Judgment

submitted with this Order. This sum of $988,059.70 shall bear interest, as provided in 28 U.S.C. 1961, from March 12, 1998, until paid. The sum of $1,600,000 does not include the following:

(a) Payments made to Plaintiffs under the Consent Judgment Orders entered on June 2, 1997 ($18,968.75, plus interest), and September 15, 1997 ($15,100, plus interest);

(b) Plaintiffs' claim for reimbursement of their fees and expenses for monitoring the Partial Settlement Agreement of July 12, 1996, and the Agreement Pursuant to Paragraph 49 of the July 10, 1996, Partial Settlement Agreement, dated May 22, 1997, which have been incurred since May 8, 1997.

X. Future Change in Applicable Law and Motions for Modification

70. If Defendants believe that a change of law resulting in the elimination or reduction in federal funding or in the amendment or elimination of legal requirements affects any provision of this Order, and Defendants desire a modification of this Order, Defendants shall notify Plaintiffs' counsel. The notice shall specify the modification desired and the reasons therefor. If the parties cannot come to an agreement regarding the modification to this Order, the parties shall jointly move the Court, within ten (10) days of the District's notice to Plaintiffs, to determine the extent to which modification shall be made. The joint motion shall request that the Court establish an expedited briefing schedule and determination of this motion.

71. Except as provided in paragraph 70 above, either party shall have the right to move the Court for a modification of this Order at any time for any reason.

72. In determining motions for a modification of this Order under paragraphs 70 and 71 above, the general body of federal law governing motions to modify orders in contested matters pursuant to Rule 60(b) of the Federal Rules of Civil Procedure shall apply.

73. Defendants shall take no action contrary to this Order based on a proposed modification to this Order under paragraphs 70 and 71 above until this Court has determined the joint motion filed under paragraphs 70 and 71. If Defendants take or threaten to take such an action, Plaintiffs may seek injunctive relief from the Court. The only exception shall be if the federal government has eliminated or reduced funding to the District for a program subject to this Order and, as a result, the District has legally eliminated or reduced such program. In that event, Defendants shall notify Plaintiffs that they propose to take such action at least five (5) days prior to the effective date of Defendant's proposed action.

XI. Termination of this Order

74. As to Section II of this Order (Processing of Medicaid Applications (Claim 4)), this Order shall terminate when Defendants have satisfied the compliance standards set forth in paragraphs 8 and 12 above for three (3) consecutive years.

75. As to Section III of this Order (Processing of Medicaid Recertifications (Claim 5)), this Order shall terminate when

Defendants have satisfied the compliance standard set forth in paragraph 19 above for three (3) consecutive years.

76. As to Section IV of this Order (Eligibility Verification System (EVS) (Claim 5)), this Order shall terminate when Defendants have shown that the verification system, including both EVS and the back-up system, have accurately confirmed the eligibility status of 98% of all requests for eligibility verification for twenty-two (22) of twenty-four (24) consecutive months and accurately confirmed the eligibility status of at least 95% of all requests for each of the other two (2) months as provided in paragraph 34 above and have accurately confirmed the eligibility status of at least 98% of all requests for the one (1) month in the following calendar year chosen by Plaintiffs. If Defendants do not achieve at least 98% compliance in the month chosen by Plaintiffs, Section IV shall not terminate until Defendants have shown at least six (6) consecutive months of compliance with the 98% standard.

77. As to Sections V and VI of this Order (EPSDT Services (Claim 6) and EPSDT Notice (Claim 7)), this Order shall terminate when Defendants have complied for three (3) consecutive years beginning no earlier than fiscal year 1999 with the provisions of Sections V and VI and the participant ratio of the District of Columbia has been no less than 75% for the last year. Defendants may move to terminate Sections V and VI of this Order at any time after fiscal year 2001 if Defendants have complied for three (3) consecutive years with all the provisions of Sections V and VI, except those setting forth a particular participant ratio, even

though they have not achieved a participant ratio of 75% for the last year, if they can show, based on persuasive evidence as to the actions taken by MCO's and Defendants, that a higher participant ratio cannot be achieved by further reasonable efforts. Defendants shall have the burden of proof.

78. All other provisions of this Order shall conclude at the same time as the last of the Sections identified in paragraphs 74-77 above.

XII. Continuing Jurisdiction

79. The Court shall retain jurisdiction of this matter to make any necessary orders enforcing or construing this Order.

80. Before any party moves the Court to enforce or construe this Order, or pursuant to any provision in this Order, except for paragraph 73 above, it shall give the other party 10 days' notice of its intention. During that 10-day period, the parties shall negotiate in good faith in an effort to resolve the dispute without seeking a decision from the Court.

XIII. Construction of This Order

81. This Order shall be construed by its own terms. The presence or absence of a provision in the Court's previous orders or in any draft of this Order shall not be relevant to the meaning of the provisions of this Order.

XIV. Other Matters

82. All references to the HCFA State Medicaid Manual shall be to the current manual at the time of the event involved.

83. The Court recognizes that computer software programs which are date dependent may experience failures in operations as the year 2000 commences, the so-called Y2K disruption, despite the Defendants taking reasonable efforts to identify and correct such problems in advance. Should such disruptions prevent the Defendants from complying with any requirement of this Order, despite Defendants taking reasonable efforts to identify and correct such problems in advance, upon notice to the Court, the Monitor, and Plaintiffs, Defendants shall have the right to suspend the provisions of the Order affected during the first six (6) months of 2000. No month during which such provisions are suspended may be used to justify termination under Section XI of this Order as to the provisions suspended. If Defendants invoke this suspension, they must, within 30 days of giving the required notice, report to the Court, the Monitor and Plaintiffs of the efforts they have taken to date and any planned in the future to identify and correct the Y2K disruption.

AGREED:

Date: 1/8/99

Kathleen L. Millian

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APPROVED AND ENTERED AS AN ORDER OF THIS COURT THIS 22nd DAY OF January, 1998.

GLADYS KESSLER
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EXHIBIT 10

OSCAR SALAZAR, *et al.*, on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,
Defendants.

Civil Action No. 93-452 (GK)
In Forma Pauperis

PLAINTIFFS' MOTION FOR AN AWARD OF LITIGATION COSTS, INCLUDING ATTORNEYS' FEES AND EXPENSES, FOR THE FIRST QUARTER OF 2013

Pursuant to the terms of the January 25, 1999, Order Modifying the Amended Remedial Order of May 6, 1997 and Vacating the Order of March 27, 1997 ("Settlement Order"), 42 U.S.C. 1988, the Order of July 19, 2004 (ECF No. 1029), and the Order of March 19, 2013 (ECF No. 1801), plaintiffs move this Court for an award of attorneys' fees and expenses for their work representing the plaintiff class in this matter during the first quarter of 2013.

Prior to filing this attorneys' fees request, plaintiffs followed the procedures in paragraph 67 of the Settlement Order, as revised by the Order of March 19, 2013 (ECF No. 1801), which provide that plaintiffs make their fees request first to defendants, who must respond by either making a settlement proposal or informing plaintiffs that no settlement proposal will be made, within 45 days of plaintiffs' submission of their attorneys' fees. The parties then have a 10-day period of time to come to an agreement, after which plaintiffs may file a motion for fees with the Court. On June 12, 2013, plaintiffs sent a letter and supporting exhibits to defendants setting forth their requested attorneys' fees and expenses. Defendants made an offer to settle this matter without litigation on July 17, 2013. Plaintiffs responded on July 18, 2013. No settlement was reached. Therefore, this motion

requests an award of $325,410.74 from the Court.

In the Order of July 19, 2004, the parties agreed on procedures to comply with Rule 23(h)(1) of the Federal Rules of Civil Procedure, which provides that attorneys' fees awards in a class action must be made on motion and that notice must be provided to class members. The July 19, 2004, Order set forth a procedure in which, if the parties did not reach agreement on the amount of attorneys' fees, plaintiffs would file a motion for an award of their fees and expenses with all necessary documentation. Further, pursuant to the Order of July 19, 2004, plaintiffs have filed a separate motion requesting that the Court order the Clerk of the Court to provide notice of this motion to the plaintiff class by placing a Notice to the Plaintiff Class on the website for the District Court for the District of Columbia. The Order of July 19, 2004, further provides that the Court may not rule on this motion until the Notice has been on the Court's website for 30 days. At the conclusion of the 30 days' notice on the Court's website, plaintiffs will file a Praecipe informing the Court that the notice period has expired and that the instant motion may be acted upon.

STATEMENT PURSUANT TO LOCAL RULE 7(m)

Plaintiffs conferred with defendants regarding this motion prior to filing it in accordance with the procedures in the Order of March 19, 2013. ECF No. 1801. The parties were unable to settle the matter. Based on the parties' discussions, defendants do not consent to this motion.

Respectfully submitted,

/s/Zenia Sanchez Fuentes

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December 20, 2013

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OSCAR SALAZAR, *et al.*, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE DISTRICT OF COLUMBIA, *et al.*, Defendants.	)	Civil Action No. 93-452 (GK) *In Forma Pauperis*

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR AN AWARD OF LITIGATION COSTS, INCLUDING ATTORNEYS' FEES AND EXPENSES, FOR THE FIRST QUARTER OF 2013

INTRODUCTION

This class action involves the District of Columbia's compliance with federal law in the provision of Medicaid to its citizens. On January 25, 1999, the Court entered an Order based on a settlement between the parties. Order Modifying the Amended Remedial Order of May 6, 1997 and Vacating the Order of March 27, 1997 ("Settlement Order"). The Settlement Order (paras. 64-67), as modified by the Order of March 19, 2013 (ECF No. 1801), includes provisions concerning rates and procedures for the compensation of plaintiffs' counsel for work done to monitor defendants' compliance with the Settlement Order. As modified, paragraph 67 provides that plaintiffs may move the Court for their quarterly fees and expenses after 55 days of submission of the application to defendants. This motion requests fees for the first quarter of 2013. Plaintiffs submitted documentation of those attorneys' fees and expenses to defendants on June 12, 2013. However, no settlement was reached. Plaintiffs' Exhibit 1 sets forth these provisions of the Settlement Order and

the Order of March 19, 2013, modifying paragraph 67 of the Settlement Order.

Paragraph 65 of the Settlement Order sets forth hourly rates, adjusted annually for inflation by the Consumer Price Index for Legal Services, which apply to "reasonable attorney time by Plaintiffs' counsel in monitoring Defendants' compliance with this Order * * *." The inflation-adjusted rates for the monitoring fees for the periods requested are set forth in Plaintiffs' Exhibits 4 and 5. The monitoring work done by plaintiffs for the first quarter of 2013 is described below on pages 12-17.

Paragraph 64 of the Settlement Order limits the hourly rate of compensation for plaintiffs' counsel for work performed on behalf of individual class members to $75, adjusted annually for inflation by the Consumer Price Index for Legal Services. For the year of 2013, the inflation-adjusted rate for work associated with the claims of individual class members was $136. *See* Pl. Ex. 4.

In addition to monitoring defendants' compliance with the Settlement Order and assisting individual class members, plaintiffs also engaged in non-monitoring work in the first quarter of 2013, including attorneys' fees litigation and extensive settlement negotiations with defendants.[1/] In the first quarter of 2013, the attorneys' fees work related to settlement negotiations concerning 2011 fees and fees held in abeyance related to appellate work incurred from 2009 to 2012, the motion requesting those fees, a motion requesting that defendants identify an undisputed amount in their opposition, settlement of the fees incurred in 2012, and drafting a consent order regarding paragraph 67 of the Settlement Order. In the first quarter of 2013, plaintiffs' settlement work involved ongoing settlement negotiations with defendants concerning modification of the recertification provisions in

1/As explained further below (pp. 8-9), although plaintiffs would be entitled to *Laffey* matrix rates for their work to try to settle the overall case, they have agreed to seek reimbursement at the lower Settlement Order rates for the work.

the Settlement Order and Court-ordered mediation concerning modifications to the Dental Order of October 18, 2004.

* * *

For work for the first quarter of 2013, plaintiffs incurred $325,410.74 in attorneys' fees and expenses (except for the fees which continue to be held in abeyance). Plaintiffs are holding in abeyance, and are not submitting time records for, fees related to the following matters which have not yet been resolved:

> Plaintiffs' work related to enforcement of and modification to the Dental Order of October 18, 2004 (ECF No. 1627), which includes:
>
> - Plaintiffs' Motion Imposing Penalties for Defendants' Failure to Comply with the Court's Order of October 18, 2004, June 8, 2006 (ECF No. 1159);[2/]
> - Plaintiffs' Motion for Order to Modify the Dental Order, September 3, 2010 (ECF No. 1627);
> - Plaintiffs' Motion for an Order Adjudging Defendants to Be in Contempt of Court and Imposing a Coercive Remedy for the Contempt, December 16, 2010 (ECF No. 1667); and
> - Plaintiffs' Motion for a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction, December 16, 2010 (ECF No. 1666).

Once the issues related to these matters are resolved, plaintiffs intend to seek fees for their work on these matters.

2/Plaintiffs' documentation of their attorneys' fees related to this motion were submitted to the Court in previous fee petitions. *See* Terris Affidavit, attached to Plaintiffs' Motion for an Award of Litigation Costs, Including Attorneys' Fees and Out-of-Pocket Expenses, for July to December 2006, (ECF No. 1328), Pl. Ex. 2, pp. 10-11; Terris Affidavit, attached to Plaintiffs' Motion for an Award of Litigation Costs, Including Attorneys' Fees and Out-of-Pocket Expenses, for January through June 2007, ECF No. 1419, Pl. Ex. 2, p. 16; Terris Affidavit, attached to Plaintiffs' Motion for an Award of Litigation Costs, Including Attorneys' Fees and Expenses for July through December 2007 and for 2008, ECF No. 1527-2, p. 29; Terris Affidavit, attached to Plaintiffs' Unopposed Motion for an Award of Litigation Costs, Including Attorneys' Fees and Expenses, for 2009 and the First Half for 2010, and Certain Fees from 2008 Previously Held in Abeyance, ECF No. 1735-2, p. 6.

ARGUMENT

I

PLAINTIFFS ARE ENTITLED TO AN AWARD OF LITIGATION COSTS, INCLUDING ATTORNEYS' FEES AND EXPENSES

The Supreme Court has held that "post judgment monitoring of a consent decree is a compensable activity for which counsel is entitled to a fee." *Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546, 558-559 (1986). All of the work for which plaintiffs seek payment in this application involves the monitoring of the Settlement Order, individual class members' issues, settlement discussions, mediation, and attorneys' fees applications. *See* Affidavit of Bruce J. Terris, attached as Plaintiffs' Exhibit 2 (hereafter "Terris Aff."), paras. 14-16.

Defendants agreed in paragraph 65 of the Settlement Order (ECF No. 663), to plaintiffs' entitlement to attorneys' fees for their work monitoring compliance with the Settlement Order. Similarly, in paragraph 64 of the Settlement Order, defendants agreed that plaintiffs are entitled to compensation for all time spent assisting individual class members with problems that relate to the claims settled in the Settlement Order. In paragraph 66 of the Settlement Order, the parties agreed to rates related to non-monitoring work. Therefore, there can be no dispute that plaintiffs are entitled to an award of attorneys' fees and expenses.

II

PLAINTIFFS SEEK FEES BASED ON HOURLY RATES PRESCRIBED BY THE SETTLEMENT ORDER AND DECISIONS OF THIS COURT

The basic principle for determining an appropriate attorneys' fee award under federal fee-shifting statutes was set forth by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983): "The most useful starting point for determining the amount of a reasonable fee is the number

of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hourly rates have been agreed to by the parties in the Settlement Order for all work monitoring the Settlement Order and work on behalf of individual class members. Settlement Order, Pl. Ex. 1, paras. 64-65; *see* Pl. Ex. 4.

As set forth in paragraph 66 of the Settlement Order, the Settlement Order rates do not apply to work not involving monitoring or individual class members. The work for which fees are sought in this application which does not involve monitoring or individual class members involves attorneys' fees applications and settlement negotiations. Based on the Court's decision of October 30, 2000, regarding the appropriate fees for similar work by plaintiffs' counsel in this case involving complex federal litigation, including appellate, settlement, and attorneys' fees work (*Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 11-15 (2000), decision adhered to, *Salazar v. District of Columbia*, 750 F. Supp. 2d 70, 72-74 (D.D.C. 2011)), *Laffey* matrix rates, updated by the Legal Services Index (LSI) of the Consumer Price Index, apply to this work. Those rates are set forth in Plaintiffs' Exhibits 6 and 7.

Plaintiffs seek the *Laffey* matrix rates for this work with one exception. The exception relates to the work of plaintiffs' counsel in settlement negotiations with defendants. Although this Court has explicitly held that plaintiffs are entitled to *Laffey* matrix rates for settlement work (*Salazar v. District of Columbia, supra*, 123 F. Supp. 2d at 10-11), plaintiffs agreed in 2011 that they would seek only the lower Settlement Order rates for their work relating to settlement negotiations, in order to facilitate settlement negotiations. This category of work has been significant. It includes discussions concerning settlement of the Dental Order and recertification provisions in the Settlement Order, both of which have gone on for over two years. (The recertification discussions have concluded, but the

Dental Order discussions are ongoing). This agreement to accept the Settlement Order rates constitutes a significant concession by plaintiffs.[3/]

1. Rates for Monitoring Work. In the Settlement Order, the parties agreed to attorneys' fees rates, to be updated annually, as of January 1, using the Consumer Price Index for Legal Services, for "monitoring Defendants' compliance with this Order."[4/] Settlement Order, Pl. Ex. 1, para. 65. The agreed 1998 rates were $315 per hour for monitoring work by Bruce Terris and Lynn Cunningham; $265 for monitoring work by Kathleen Millian and Jane Perkins; a maximum rate for monitoring work by any other attorney of $200; and $75 for work by paralegals.

The rates for the year of 2013 are $572 for Bruce Terris and Lynn Cunningham; $481 for Kathleen Millian and Jane Perkins; $363 for the maximum rate for other attorneys; and $136 for paralegals. Pl. Ex. 4.

2. Rates for Work for Individuals. The parties also agreed in the Settlement Order that (Pl. Ex. 1, para. 64):

> The hourly rate for handling the claims of individual class members shall be $75/hour, regardless of the experience level of the lawyer who performs the work. This hourly rate shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

The rate for 2013 for handling individual claims was $136 an hour. *See* Pl. Ex. 4. This rate applies equally to all attorneys and paralegals who perform the work, regardless of their experience level.

3/The difference in fees for this work would be $40,533.41. *See* Terris Aff., para. 10. For instance, the hourly rate under paragraph 65 of the Settlement Order for Kathleen Millian is $481. Pl. Ex. 5. The *Laffey* matrix hourly rate for Ms. Millian in the first quarter of 2013 is $753. Pl. Ex. 7.

4/The 1998 rates are updated annually, as provided in the Settlement Order, by using the Legal Services component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor. *See* Pl. Exs. 4, 5. The method for updating is described in paragraph 19 of the Terris Affidavit.

Settlement Order, Pl. Ex. 1, para. 64. This Court has recently upheld the method used by plaintiffs to update the hourly rates in the Settlement Order. *Salazar v. District of Columbia*, *supra*, 750 F. Supp. 2d at 72-74.

3. Fees for Work other than for Monitoring and Individual Claims.

In Plaintiffs' Memorandum in Support of Their Motion for an Award of Litigation Costs, Including Attorneys' Fees and Out-of-Pocket Expenses for 1998 (ECF No. 689), filed December 9, 1999, plaintiffs demonstrated (pp. 5-9) that, under the precedents of this Circuit and on the basis of the evidence they presented, they were entitled to rates, updated using the Consumer Price Index for Legal Services. *See* Pl. Exs. 4, 5, 19, attached thereto; Plaintiffs' Reply Memorandum in Support of an Award of Litigation Costs, Including Attorneys' Fees and Out-of-Pocket Expenses for 1998 (ECF No. 698), filed February 8, 2000, Pl. Exs. 27-29.[5/] This Court agreed. *Salazar v. District of Columbia*, *supra*, 123 F. Supp. 2d at 11-15. In 2010, defendants made a renewed challenge to the method of updating Washington, D.C. market rates for complex federal litigation approved by the Court in 2000. Plaintiffs responded with updated documentary evidence demonstrating that this Court's method remained appropriate. *See* Plaintiffs' Reply in Support of Their Request for an Award of Litigation Costs, Including Fees and Expenses for July 2007 through December 2007 and for 2008 (ECF No. 1587), Pl. Exs. 28-75.[6/] This Court reaffirmed its reasoning as to appropriate market rates. *Salazar v. District of Columbia*, *supra*, 750 F. Supp. 2d at 72-74.

Plaintiffs have submitted evidence in recent filings with the Court showing that the *Laffey* matrix rates, updated by the LSI, align closely with, but are lower than the market rates in

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5/Plaintiffs incorporate that evidence by reference and are not re-submitting it with this motion.

6/Plaintiffs incorporate that evidence by reference and are not re-submitting it with this motion.

Washington, D.C. for complex federal litigation. ECF No. 1859-1, paras. 3-14 and ECF Nos. 1859-6 to 1859-28 and 1860-1 to 1860-8; ECF No. 1903-3, paras. 1-10 and ECF Nos.1903-6 to 1903-22. The evidence is summarized in the Terris Affidavit. Pl. Ex. 2, paras. 22-29.[7/] Plaintiffs' evidence of the rates being charged for complex federal litigation in Washington, D.C. shows that the *Laffey* matrix rates updated by the LSI are lower on average by 14% than actual market rates for 2012-2013.

The *Laffey* matrix rates are updated as of May 31 of each year. *See* Pl. Ex. 6. The *Laffey* rates for the first quarter of 2013 are:

Years out of Law School	**6/1/12-5/31/13**
20+	$753
11-19	$626
8-10	$554
4-7	$384
1-3	$312
Paralegal	$171

When these hourly rates are multiplied by the number of hours of work performed by each of the attorneys and paralegals/law clerks who worked on this case in the first quarter of 2013, the total combined fees for non-monitoring work are $85,401.56. *See* Pl. Ex. 7.

Plaintiffs note that the great majority of the fees requested in this application, 72.51%, are for work which is not compensable at *Laffey* matrix rates. *See* Pl. Exs. 8, 9.

7/Plaintiffs incorporate by reference the market rates evidence for 2011-2013 submitted in ECF Nos. 1859, 1860, and 1903 and are not re-submitting it with this motion.

III

THE TIME EXPENDED BY PLAINTIFFS WAS REASONABLE

The Court must determine the amount of time reasonably expended on the litigation. *Hensley v. Eckerhart, supra*, 461 U.S. at 434. Plaintiffs submit that the time included in this application was reasonably expended in the representation of the class. The work which plaintiffs' counsel performed in these periods was directly related to the representation of the class. The work of plaintiffs' counsel is set forth in the time records of plaintiffs' counsel in Plaintiffs' Exhibit 9 attached.

Plaintiffs have eliminated time in the exercise of billing judgment. Paragraph 10 of the Affidavit of Bruce J. Terris (Pl. Ex. 2) describes the time and attorneys' fees that plaintiffs have eliminated. Plaintiffs have eliminated 146.75 hours for work in the first quarter of 2013, which has resulted in a reduction of $53,908.39 in fees. *See* Pl. Ex. 10. In addition, plaintiffs' agreement for reduced hourly rates for settlement work has reduced plaintiffs' fees by $40,533.41. Terris Aff., para. 10. Plaintiffs submit that, with the reductions plaintiffs have made in the exercise of billing judgment, their fees request is more than reasonable. The combined total of plaintiffs' reductions as a result of billing judgment and plaintiffs' agreement to seek only the Settlement Order rates for settlement and mediation amounts to $94,441.80, a 29.31% overall reduction in the fees sought by plaintiffs. Plaintiffs' Exhibit 18 provides a summary of the fees, expenses, and deductions in this request.

A. WORK MONITORING THE SETTLEMENT ORDER AND ON INDIVIDUAL CLAIMS

For the first quarter of 2013, plaintiffs request $124,727.81 for their lead counsel, Terris, Pravlik & Millian, LLP, for monitoring defendants' compliance with the Settlement Order and $100,588.46 for representing individual class members.

1. Work Monitoring Defendants' Compliance in the First Quarter of 2013

Plaintiffs request $124,727.81 for work related to monitoring defendants' compliance with the Settlement Order and related orders. These fees are shown in Plaintiffs' Exhibit 8, pp. 11-24.

The largest portion of this category of work ($83,356.18) involved negotiating with defendants regarding the recertification provisions in the Settlement Order and the Court's Order of October 18, 2004 (Dental Order). *See* Pl. Ex. 8, pp. 15-16, 19-20. Plaintiffs' settlement work in the first quarter of 2013 included conducting research regarding the impact of the Affordable Care Act and its implementing regulations on defendants' Medicaid eligibility determinations; performing an analysis of class-wide recertification data provided by defendants in support of settlement discussions; negotiating with defendants, including preparing for and participating in two settlement meetings with defendants; and drafting and revising a consent order concerning modifications to the recertification provisions in the Settlement Order. *See* Terris Affidavit, para. 15(b). It also included negotiating with defendants concerning modifications to the Dental Order concerning children's oral health, including preparing for and participating in four court-ordered mediation sessions; performing legal and factual research; developing proposals; and evaluating defendants' proposals. *See* Terris Aff., para. 15(d).

Aside from the settlement work, plaintiffs' monitoring work included investigating potential class-wide issues concerning the provision of case management for children with disabilities in the District of Columbia; reviewing documents prepared by Court Monitor, Dr. Henry Ireys, concerning a study of defendants' blood lead testing program; reviewing dental provider lists; reviewing and analyzing defendants' quarterly EPSDT report; attending Medical Care Advisory Committee

(MCAC)[8/] meetings hosted by DHCF to ensure that plaintiffs' counsel have up-to-date information concerning actions taken by DHCF affecting the plaintiff class; editing a motion to enforce defendants' compliance with the tracking requirements of paragraph 37 of the Settlement Order; reviewing and analyzing data in defendants' biannual notice and outreach reports; reviewing status reports from Court Monitor, Dr. Henry Ireys, concerning adolescent notice and outreach pilots conducted by the MCO's; preparing for and participating in a settlement discussion with Court Monitor, Dr. Henry Ireys, and defendants concerning compliance with the tracking requirements of paragraph 37 of the Settlement Order; drafting a notice letter to defendants concerning compliance with the Reimbursement Procedures Order, reviewing defendants' response, and drafting a response; preparing for and participating in regular status conferences with the Court, including drafting agenda letters and reviewing defendants' responses; and general factual and legal research concerning EPSDT issues, including the operational and financial status of Chartered Health Plan Inc., the largest managed care organization in the District providing services to children during the first quarter of 2013.

This monitoring work is more fully described in the Terris Affidavit, Pl. Ex. 2, para. 15.

2. Work on Individual Claims in the First Quarter of 2013

Plaintiffs request $100,588.46 for work on behalf of individual class members during the first quarter of 2013. These fees are shown in Plaintiffs' Exhibit 8, pp. 1-11.

In the first quarter of 2013, plaintiffs spent 116.10 hours assisting families of Medicaid-eligible

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8/The Medical Care Advisory Committee is a federally mandated committee that meets every month with key participants and stakeholders in the Medicaid program to review the program's operations and provide advice for improvements to the District of Columbia's Medicaid agency, the Department of Health Care Finance (DHCF).

children under 21 who experienced a denial or had difficulty obtaining medical services; 40.38 hours assisting individuals who experienced termination or threatened termination of Medicaid eligibility at recertification without adequate and timely notice by the District of Columbia; and 257.04 hours assisting individuals with a claim for reimbursement by the District of Columbia for medical expenses that should have been covered by Medicaid. *See* Pl. Ex. 8, pp. 1, 4, 6, 9, 10. As explained in the Terris Affidavit (para. 14(e)), the nature of the issues presented by individual class members can be very time consuming because of the difficulty that our clients have in obtaining and keeping the kinds of detailed records necessary to satisfy government agencies and the complicated bureaucracy involved in obtaining information and coordinating among providers, collections agencies, and third party payers to resolve reimbursement issues.

Plaintiffs also represented ten class members[9/] in fair hearing cases before the District of Columbia Office of Administrative Hearings (OAH) during the first quarter of 2013. *See* List of OAH Cases, Pl. Ex. 16. The fair hearings are evidentiary hearings presided over by an Administrative Law Judge where the MCO and DHCF were both represented by counsel. Pl. Ex. 2, para. 14(b). We represented four EPSDT-eligible children, three individuals with recertification processing issues, and two individuals seeking reimbursement for expenses DC Medicaid should have covered. Pl. Ex. 16.

Of these ten cases, those involving EPSDT-eligible children were the most time-consuming and complicated. *See* Terris Aff., para. 14(b). In each of the four EPSDT fair hearing cases, plaintiffs evaluated the claims and determined that the families had a good-faith basis to challenge the denials

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9/We are not billing the time for one of the individuals whom we represented in the first quarter of 2013 because his claim did not fall within the *Salazar* plaintiff class. Pl. Ex. 16.

or reductions in services. Pl. Ex. 2, para. 14(b). T.M. and B.R., two of the children we represented in fair hearings in the first quarter of 2013, and continue to represent to date, had severe and multiple disabilities requiring intensive services. *Ibid*. Plaintiffs successfully requested and obtained continuing services for both children during the pendency of the proceedings and/or settlement discussions. *Ibid*. The remaining two cases, F.K, and N.R. involved denials of orthodontic services. *Ibid*. Plaintiffs obtained a reversal of the initial decision denying services in one orthodontia case without the need for an evidentiary hearing. *Ibid*. The second orthodontia case, F.K., went to an evidentiary fair hearing and the claimant did not prevail. *Ibid*. The work involved in the litigated case included factual investigation, document review, representation at pre-hearing status conferences, identification of a witness and exhibits, preparation of the witness and cross-examination, opening and closing statements, and preparation of a post-hearing brief. *Ibid*. Some of the cases that did not go to litigated hearings before the OAH involved many of these same activities. *Ibid*. As a result, in the first quarter of 2013, plaintiffs spent an average of 39.25 hours on each EPSDT case. *See* Chart of Average Number of Hours per Fair Hearing Case, Pl. Ex. 20.

As to the three recertification fair hearing cases in the first quarter of 2013, all of which were referred to plaintiffs' counsel by the District of Columbia's Office of the Health Care Ombudsman and Bill of Rights, plaintiffs' counsel have been able to resolve these cases favorably without the need for an evidentiary hearing and the additional time and expenses that these hearings entail. Pl. Ex. 2, para. 14(d). Similarly, the two reimbursement fair hearing cases in the first quarter of 2013 have now been favorably resolved. *Ibid*.

Finally, pursuant to paragraph 64 of the Settlement Order,[10/] plaintiffs assisted 264 individuals who contacted our law firm in the first quarter of 2013 to request legal assistance, who were ultimately determined not to be members of the plaintiff class. Pl. Ex. 19. Plaintiffs spent 47.11 hours assisting these individuals. *See* Pl. Ex. 8, p. 7.

We emphasize that all of the work on behalf of individual class members is compensated at the paralegal rate, regardless of the experience level of the attorney performing the work. Approximately 48% of the total number of hours worked on behalf of individual class members in the first quarter of 2013 was spent by attorneys billing at the paralegal rates of $136. *See* Pl. Exs. 5, 8. This work is more fully described in the Terris Affidavit, Pl. Ex. 2, para. 14.

* * *

The work described above is sought at the updated agreed rates under paragraphs 64 and 65 of the Settlement Order, which are set forth in Plaintiffs' Exhibits 4 and 5.

B. WORK ON ATTORNEYS' FEES

Plaintiffs request attorneys' fees of $85,401.56 for 216.23 hours of work relating to attorneys' fees performed in the first quarter of 2013. During the first quarter of 2013, plaintiffs participated in unsuccessful negotiations with defendants concerning plaintiffs' settlement offer regarding their

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10/The firm's long-standing practice, which is in accordance with the specific terms of paragraph 64 of the Settlement Order, is to bill the first 15 minutes of help we provide to an individual who is later determined to be a non-class member. Terris Aff., para. 14(g). Paragraph 64 of the Settlement Order provides: "Plaintiffs' counsel may respond to all calls which come to their office and make reasonable inquiry to determine whether the caller is a member of the plaintiff class. If the caller is a member of the plaintiff class, Plaintiffs' counsel may provide the caller with legal assistance."

In the first quarter of 2013, as in prior years, plaintiffs' counsel documented the non-billable time spent, beyond the initial 15 minutes, ascertaining whether the caller was a member of the plaintiff class and referring the individual to an appropriate resource. *See* No Charge Time Records, Pl. Ex. 10, pp. 1-5. In the first quarter of 2013, the additional time spent assisting callers who were later determined not to be class members, beyond the initial 15 minutes, was 21.07 hours. *Ibid*.

2011 fees request (which included attorneys' fees held in abeyance related to appellate work incurred from 2010 to 2012); prepared a motion requesting those fees, including exhibits and related notices to the plaintiff class and the Court, and prepared a detailed chart of individuals who received assistance from our firm in 2011; and on a motion requesting that defendants identify an undisputed amount concerning the fees in plaintiffs' 2011 fees motion. Plaintiffs also performed a small amount of work related to settlement of the fees incurred in 2012. In addition, plaintiffs drafted a joint motion and a proposed consent order regarding paragraph 67 of the Settlement Order, which relates to the frequency of and deadlines for submission of fee petitions.

The majority of the work, totaling approximately 186.55 hours and $69,923.87, was spent on work related to plaintiffs' 2011 fees motion, which encompassed a time period spanning three years, *i.e*, from 2010 to 2012, and required extensive documentation. *See* Plaintiffs' Motion for an Award of Litigation Costs, Including Attorneys' Fees and Expenses, for 2011 and Certain Categories of Work from 2010 through 2012 that Had Previously Been Held in Abeyance or Not Decided, ECF No. 1803. The work is more fully described in the Terris Affidavit, para. 16.

IV

PLAINTIFFS' CO-COUNSEL ARE ENTITLED TO COMPENSATION FOR THEIR REASONABLE HOURS

In addition to compensation for work performed by lead counsel for the plaintiff class, Terris, Pravlik & Millian, plaintiffs also seek compensation for their co-counsel. Affidavits and contemporaneous time records kept by plaintiffs' co-counsel, Lynn Cunningham and Jane Perkins of the National Health Law Program (hereafter "NHeLP") are submitted as Plaintiffs' Exhibits 12 through 14.

In the first quarter of 2013, Ms. Perkins spent 17.90 hours related to the monitoring of defendants' compliance with the Settlement Order. The majority of this work related to Ms. Perkins' participation in the Dental Order mediation efforts, which plaintiffs have agreed to bill at Settlement Order rates.[11/] The paragraph 65 rate of $481 applies to those hours. *See* Pl. Ex. 12. In the first quarter of 2013, Ms. Perkins spent 0.6 hours related to non-monitoring activities to which the *Laffey* rate of $753 applies. *See* Pl. Exs. 6, 13. In total, Ms. Perkins spent 18.5 hours for which plaintiffs seek compensation in this application.

Mr. Cunningham spent 2.2 hours related to the monitoring of defendants' compliance with the Settlement Order in the first quarter of 2013. Pl. Ex. 15. The paragraph 65 rate of $572 applies to those hours. *See* Pl. Ex. 14. Mr. Cunningham spent a total of 1.5 hours related to non-monitoring activities. *Ibid*. The *Laffey* rate of $753 applies to those hours. In total, Mr. Cunningham spent 3.7 hours for which plaintiffs seek compensation in this application. Pl. Ex. 15

Therefore, plaintiffs are requesting fees of $9.061.70 for Ms. Perkins and $2,387.90 for Mr. Cunningham. Pl. Exs. 12-15.

V

PLAINTIFFS ARE ENTITLED TO AN AWARD OF REASONABLE LITIGATION EXPENSES

In addition to reasonable attorneys' fees, plaintiffs request an award for out-of-pocket litigation expenses incurred by their counsel in the first quarter of 2013 of $3,243.31. Pl. Ex. 11; *see* Terris Aff., paras. 31, 32. Plaintiffs' requested expenses include the amount incurred for out-of-

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11/Although *Laffey* matrix rates apply to settlement work (*see Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 10-11 (2000)), plaintiffs have agreed to seek only the lower Settlement Order rates in order to facilitate Dental Order mediation and recertification settlement negotiations, which has reduced Ms. Perkins' fees by approximately $4,297.60.

pocket expenses in the following categories: document production (photocopying, faxing, and scanning), local travel expenses, messenger delivery fees, PACER Court docket system, postage, printing, telephone conference calls, transcript/reporting fees, and Westlaw legal research. As explained in the Terris Affidavit (Pl. Ex. 2, para. 32), each of these categories is normally billed to counsel's fee-paying clients and would have been billed to plaintiffs if they had been paying fees.[12/]

Summaries of the litigation expenses by category are contained in Plaintiffs' Exhibit 11. These categories are described in the Terris Affidavit, Pl. Ex. 2, para. 33.

CONCLUSION

For the reasons stated above, plaintiffs request an award of litigation costs, including attorneys' fees for the first quarter of 2013, as follows:

2013 First Quarter Fees and Expenses of Terris, Pravlik & Millian	$313,916.14
2013 First Quarter Fees of Co-Counsel Jane Perkins and Lynn Cunningham	$11,449.60
TOTAL	$325,410.74

The total amount requested in this fees motion is $325,410.74. A proposed order is attached.

12/On December 12, 2013, plaintiffs' counsel were informed by defendants' counsel, Sally Gere, that defendants did not wish to have the voluminous back up costs and expenses filed as an exhibit in this application. Plaintiffs will produce this information as a supplemental exhibit if the Court wishes to have this information.

Respectfully submitted,

/s/Zenia Sanchez Fuentes

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Counsel for Plaintiffs

December 20, 2013

LIST OF EXHIBITS

Number	Description
1	Excerpt of Paragraphs 64-66 from "Order Modifying the Amended Remedial Order of May 6, 1997 and Vacating the Order of March 27, 1997" January 25, 1999 and Consent Order Modifying Paragraph 67 of the Order Modifying the Amended Remedial Order of May, 6, 1997 and Vacating the Order of March 27, 1997; Order of March 19, 2013
2	Affidavit of Bruce J. Terris
3	U.S. Department of Commerce, Bureau of Labor Statistics, Legal Services Component of the Consumer Price Index
4	Settlement Order Paragraph 64 and 65 Rates Updated (Showing Rates up to 2013)
5	Settlement Order Rates, Hours, and Fees for Attorneys
6	*Laffey* Matrix Updated (Showing Rates up to 2013)
7	*Laffey* Rates, Hours, and Fees for Attorneys from January 1, 2013, through March 31, 2013
8	Summary of Fees by Category and Rate from January 1, 2013, through March 31, 2013
9	Redacted Time Records of Terris, Pravlik & Millian from January 1, 2013, through March 31, 2013
10	Redacted No Charge Time Records of Terris, Pravlik & Millian from January 1, 2013, through March 31, 2013
11	Expense Summary relating to fees from from January 1, 2013, through March 31, 2013
12	Affidavit and Time Records of Jane Perkins
13	Time Records of Jane Perkins from January 1, 2013, through March 31, 2013
14	Affidavit and Time Records of Lynn Cunningham
15	Time Records of Lynn Cunningham from January 1, 2013, through March 31, 2013
16	Chart of OAH Fair Hearing Cases from January 1, 2013, through March 31, 2013
17	Resumes of Terris, Pravlik & Millian Attorneys

Number	Description
18	Summary Calculation of Total Fees and Expenses
19	Summary Chart of Individual Claims, for January to December 2011 **[Filed Under Seal]**
20	Chart of Average Number of Hours per Fair Hearing Case from January 1, 2013, through March 31, 2013

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EXHIBIT 11

DL, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. THE DISTRICT OF COLUMBIA, et al., Defendants.	)	Civil Action No. 05-1437 (RCL)

DECLARATION OF DR. LAURA A. MALOWANE

I, Laura A. Malowane, declare as follows:

1. I am a Vice President of Economists Incorporated, an economic consulting firm in Washington, D.C. I have been employed at Economists Incorporated since 1998. Prior to that I was an economic consultant for Princeton Economics Group and a lecturer in Economics and Statistics at Princeton University, both located in Princeton, NJ. I have testified about economic and statistical issues by declaration, at deposition, before administrative bodies and at trial. I have extensive experience in analyzing and testifying on issues related to the awarding of attorneys' fees.

2. I received my Ph.D. in Economics from Princeton University in 1998 where my areas of specialization were microeconomics and industrial organization. I also earned a Master degree in Economics from Princeton University in 1995, LL.B. and M.B.A. degrees from York University in 1991, and a Bachelor degree in Economics from York University in 1987. A copy of my curriculum vitae is attached as Appendix 1.

3. I have been asked by defendants to review and respond to the Plaintiffs' Motion for An Award of Litigation Costs, Including Attorneys' Fees and Related Expenses and its supporting exhibits and materials (collectively "Plaintiffs' Motion"), and to provide my

opinion about the appropriate attorney rate matrix to use for the calculation of reasonable attorney fees.

4. In my opinion the attorney fee matrix issued and updated by the United States Attorneys' Office for the District of Columbia ("USAO Matrix") is the appropriate matrix to use for purposes of determining plaintiffs' attorney fees. In formulating my opinions I have reviewed the plaintiffs' attorneys' fee motion materials, publicly available articles data, and case materials. A full list of the materials I have considered is attached as Appendix 2. I reserve the right to revise my opinions based on additional information that is made available to me and to respond to any additional declarations submitted by Plaintiff.

ANALYSIS

I. USAO Matrix and Salazar Matrix Overview

5. For many years the United States Attorney's Office for the District of Columbia ("USAO") has used a specific matrix as a basis for determining reasonable attorneys' fees in litigation claims. This matrix concept was first introduced by the District Court for the District of Columbia to determine reasonable attorneys' fees for work performed in *Laffey v. Northwest Airlines, Inc.,* 572 F. Supp. 354, (D.D.C. 1983), aff'd 746 F.2d 4 (D.C. Cir. 1984). The attorney fees awarded in that case were for work done primarily in 1981 and 1982.

6. In 2015, the USAO updated its matrix methodology and introduced a new matrix, known as the USAO Matrix. This new matrix begins with 2011 average hourly attorney rates derived from ALM Legal Intelligence's 2011 Survey of Law Firm Economics.[1] The data provided by this survey represents *actual* average billing rates of attorneys from all size firms in the Washington, DC metropolitan area.[2]

7. While the USAO Matrix will be updated periodically as new reliable survey data become available, in the interim years the matrix will be adjusted for inflation using a Producer Price Index ("PPI") published by the Bureau of Labor Statistics ("BLS"). A PPI measures the average change over time in the selling price received by producers for their products

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1 This survey is under copyright and available for purchase through the firm ALM Legal Intelligence (www.almlegalintel.com).

2 The Washington, DC metropolitan area is defined by the US Census bureau, and ALM Legal Intelligence follows that definition in its surveys.

or services. The specific PPI that will be used to update the USAO Matrix is one that tracks pricing changes in the output of Offices of Lawyers (NAICS 541110). The legal services covered by the PPI-Offices of Lawyers ("PPI-OL) include Real Estate, Civil Negligence, Estate Planning, Family, Tax, Intellectual Property, Bankruptcy, Labor and Employment, and Criminal. The types of prices measured by the index include hourly rates, flat fees, contingency fees, retainer fees and hybrid fees. Individuals providing these services include attorneys and paralegals, while potential purchasers of such services include consumers, government agencies and corporations.[3] The USAO Matrix is presented in Appendix 3.

8. Plaintiffs' attorneys in this case propose an alternative table of hourly rates, the Salazar Matrix, be used to calculate compensation for the attorney services rendered. This matrix was introduced in *Salazar v. District of Columbia*, 123 F.Supp.2d 8, 13-14 (D.D.C. 2000). The Salazar Matrix begins with rates provided in an attorney's 1989 declaration in a different matter and then proposes to use a national consumer index, the U.S. City Average of the Consumer Price Index for Legal Services ("CPI- LS"), to update these hourly billing rates.

9. The CPI-LS averages out pricing changes for personal legal services in several urban centers in the United States. The specific services tracked by the CPI-LS are non-commercial legal services provided to individual household consumers: such as wills, uncontested divorces, powers of attorney, and traffic violations. For each of these pre-defined services, the BLS seeks to measure changes in the price for the entire procedure (otherwise known as a "flat-fee").[4]

10. Table 1 below displays the original data source and inflation index used for each of the two matrixes.

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3 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 20.

4 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 18.

Table 1
Salazar and USAO Matrixes

	Salazar Matrix	USAO Matrix
Base Year Data	1989	2011
Data Source	Attorney Declaration	Survey Data
Index Used for Updating	CPI-LS	PPI-OL

Source: www.laffeymatrix.com
https://www.justice.gov/usao-dc/file/796471/download

II. The USAO Matrix is Superior to the Salazar Matrix for Estimating Federal Litigation Attorney Fees in Washington, DC

11. In this section I contrast the USAO Matrix with the Salazar Matrix and show that the USAO Matrix is based on more current and reliable survey data, more precisely aligns its billing rates to the years of experience of attorneys, and uses an inflation index that better captures the pricing changes of the relevant market. For these reasons the USAO Matrix is superior to the Salazar Matrix for estimating attorney fees in federal litigation cases in Washington, DC.

i) The USAO Matrix is Based on More Current and More Reliable Data

12. The USAO and Salazar Matrix each begin with data of attorney billing rates for a given year and then update these rates each year with a specific inflation index. The USAO Matrix begins with 2011 survey data of billing rates for the Washington, DC area that are published in the Survey of Law Firm Economics (SLFE), while the Salazar Matrix begins with 1989 data. Both of these matrixes are updated yearly by adjusting for inflation. As each new year of matrix rates is estimated, there is a chance of forecasting error. Since each subsequent year's calculation is based on the estimates from previous years, any individual year's forecasting error gets compounded in future years. The more years the matrix continues without updating its original data source, the more previous years' forecasting errors may be compounded. As stated in a Declaration by plaintiffs' expert

Mr. Kavanaugh in a separate matter "(i)n general, the more contemporary the observation, the less possibility exists for forecasting errors."[5] For these reasons, estimated current attorney rates based on five-year old data (as they are in the USAO Matrix) are highly likely to be more accurate than those based on 28 year-old data (as they are in the Salazar Matrix).

13. The USAO Matrix also has the advantage of beginning with more reliable data than the Salazar Matrix. Both matrixes claim to be derived from survey data. In a proper survey one must identify such things as the sampling frame (the people who have a chance of being included in the survey), the sampling design (how respondents of the survey are selected), and the mode of data collection (such as phone interview, in-person interview or mailer). It also must be determined what an adequate sample size is for each data point (for example how many attorneys of 20-years of experience must respond in order estimate the billing rate for such attorneys). Further, for the sample to be representative of the population one must make sure to avoid selection bias, such as when respondents are not randomly selected.[6]

14. The data used by the USAO Matrix are based on a statistical survey of hundreds of attorneys in the Washington, DC area. Questionnaires are mailed out and responses are tallied. Sampling frame and design are clearly stated in the survey and a particular billing rate is provided in the survey results only if there is sufficient statistical data to assure its accuracy. In practical terms this means that for each billing rate of each experience level there must be a sufficient number of firms and individual attorneys providing data to determine that rate. If there is not a sufficient number of survey respondents for a particular rate, the billing rate is not provided in the survey results as it is deemed to not be sufficiently reliable. These survey parameters ensure that the data published in the SLFE are reliable.[7]

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5 Declaration of Michael Kavanaugh, *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, 2013, par. 23.

6 Principles of Survey Methodology, Winter 2014, UCLA, Applied Research Methods in the LA Labor Community.

7 ALM Legal Intelligence, the producers of the SLFE, state that the survey is undertaken annually, and invitations to participate in the survey are sent to various law firms, including firms that had prior contact with ALM Legal Intelligence, and various members of the Association of Legal Administrators and other mailing lists. Sole practitioners are not included in survey rates prior to 2014. Only billable rates for full time attorneys are used. No data are shown for any category that does not have information supplied by at least five firms and seven individual positions. Medians are only shown for 11 or more data points. Quartile

15. In contrast, the statistical reliability of the data used in the Salazar Matrix is much more tenuous. The rates in this matrix use as a starting point a 1989 fee schedule that was based on a single attorney's declaration.[8] The declarant, Mr. Joseph Yablonski, provided a schedule of rates that he said were based on discussions he had with attorneys from several firms. Mr. Yablonski never explained how he identified the attorneys and firms to sample, the number of attorneys he spoke with, how many data points were collected to derive each individual billing rate in the matrix, or how many data points were collected in total. For example, it is quite possible that any particular rate in the 1989 fee schedule is based on an interview of one attorney from one law firm. It is also possible that selection bias exists since the attorneys may have been hand-selected by Mr. Yablonski who was seeking attorney fees for himself. Given these numerous problems there is no way to determine the reliability of the data provided by Mr. Yablonski in his declaration.

16. The statistical reliability of the data provided by plaintiffs in Exhibits 47 to 49 is tenuous in much the same way. In these exhibits plaintiffs provide a summary of data collected through bankruptcy reports, fee applications, and attorney declarations. Plaintiffs do not clearly state their sampling methodology and other information to enable a determination of the reliability of their data. For example, plaintiffs provide declarations from several attorneys and use the billing rates in these declarations as data points. However plaintiffs do not provide information on the method used to determine the attorneys to request declarations from, so it is impossible to know if there are statistical problems with this data such as selection bias. Plaintiffs also do not indicate what methodology they used to ensure that sufficient data was acquired for each billing rate to ensure its statistical reliability. For example, in Exhibits 47 plaintiffs provide a billing rate for attorneys with 8 to 10 years of experience using sample fees from attorneys in just four different firms. The producers of the SLFE would not have deemed such a small sample statistically reliable and as such would not have provided an average billing rate for these attorneys.[9] Plaintiffs also do not seem to properly compute the average rates of their data. Exhibit 48 provides an "average of the averages" for billing rates of each experience level, which

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and ninth decile information is only shown for 17 or more data points. (The 42nd Annual Survey of Law Firm Economics, p. 10)

8 *See* Decl. of Joseph A. Yablonski, *Broderick v. Ruder*, Civ. No. 86-1834 (D.D.C.). (Plaintiffs' Exhibit 33) Plaintiffs in *Salazar* offered an "updated" *Laffey* Matrix, and their support for it was this declaration by one of the attorneys (Joseph Yablonski) who developed his own matrix based on a case he personally litigated. *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988) (en banc).

9 See footnote 7.

seems to be an average of each firm's average billing rate in that experience level. This statistic ignores the number of attorneys sampled at each firm and thus does not weight the average accordingly. For example, if 10 first-year attorneys at Akin Gump bill at a rate of $300 and one first-year attorney at Jones Day bills at a rate of $700 it would be misleading to say that the average rate for all first-year attorneys is $500. (In this example, the appropriate weighted average rate would be $336.) I discuss other problems with plaintiffs' methodology and conclusions as they relate to Exhibits 47 to 49 later in this Declaration.

17. In his declaration, Mr. Kavanaugh does not examine the reliability of the plaintiffs' data or the 1989 data used as a basis for the Salazar Matrix. He does state, however, that the data used in the USAO Matrix (those derived from the 2011 SLFE for the Washington, DC area) are flawed because they do not represent rates of complex federal litigation. Mr. Kavanaugh also states that he believes the market for legal services in complex federal litigation in Washington DC is a national market, not a local market.[10] To assess the validity of these arguments I turned to the larger 2014 national SLFE survey done by ALM Intelligence, which provides rates by specialty and area.[11] I then examined the national rates in the legal specialization of litigation. Since complex federal litigation may have some of the higher rates in the litigation specialty, I also looked at the rates charged by the top 10% of attorneys in the nation for litigation services.

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10 Plaintiffs' Exhibit 27. See also, Plaintiffs' Motion, footnote 15.

11 When available, the SLFE provides billing rates in the areas of "non-litigation" and "litigation." Within the area of litigation rates are provided, when available, for sub-specialties that include: Antitrust, Bankruptcy, Collections, Commercial/Contract, Criminal Education, Insured Defense, Self-insured Defense, Employee Benefits, Employment, Environmental, Family Law, Health Care, Intellectual Property, International, Labor/Management, Labor/Union, Maritime, Natural Resource, Personal Injury, Products Liability, Real Estate, Securities, Taxation, Trusts/Estates/Probate, Workers' Compensation, Other Litigation, and Multi Litigation. (The 42nd Annual Survey of Law Firm Economics, p. 7)

Table 2
National Litigation Billing Rates vs Matrix Rates

Years of Experience	Average (2014)	Median (2014)	Top 25% (2014)	Top 10% (2014)	USAO Matrix (2015)	Salazar Matrix (2015)
31 or More	$375	$430	$513	$570	$568	$796
21 to 30	$320	$385	$455	$513	$530	$796
16 to 20	$320	$365	$453	$476	$504	$661
11 to 15	$280	$360	$425	$457	$455	$661
8 to 10	$269	$315	$375	$394	$386	$586
6 to 7	$240	$313	$351	$360	$332	$406
4 to 5	$220	$275	$315	$337	$325	$406
2 to 3	$203	$255	$275	$285	$315	$331
Under 2	$225	$240	$245	$260	$284	$331

Source: The 42nd Annual Survey of Law Firm Economics, 2014
www.justice.gov/usao-dc/file/796471/download
www.laffeymatrix.com
Note: For comparison purposes, the Salazar Matrix rates are displayed using the USAO Matrix experience categories.

18. Table 2 shows the USAO Matrix rates are well above the national rates charged by litigation attorneys. The matrix's rates are also well above the top 25% billing rates of litigation attorneys in the country and are approximately the same as the nation's top 10% litigation billing rates. Thus even if complex federal litigation rates are in the nation's top 10% of litigation rates, the figures represented in the USAO Matrix are still sufficiently high. If the rates for complex federal litigation are closer to the nation's average or even the top 25%, then the USAO Matrix rates are overcompensating for complex federal litigation services.

19. The 2014 national SLFE also breaks down litigation rates by sub-specialty. Since complex federal litigation is not part of the breakdown, I instead examined one of the highest paying sub-specialties according to the survey – bankruptcy litigation. Bankruptcy is also the same specialty plaintiffs used as the primary source for rates in their motion and they refer to it as a type of complex federal litigation.[12]

12 See Affidavit of Bruce Terris, Plaintiffs' Motion, Exhibit 1, pp. 81-83.

Table 3
National Bankruptcy Litigation Billing Rates vs Matrix Rates

Years of Experience	Bankrupty Litgation Average (2014)	Bankruptcy Litgiation Median (2014)	USAO Matrix (2015)	Salazar Matrix (2015)
31 or More	$440	$470	$568	$796
21 to 30	$431	$433	$530	$796
16 to 20	$371	-	$504	$661
11 to 15	$336	$320	$455	$661
8 to 10	$290	-	$386	$586
6 to 7	$291	-	$332	$406
4 to 5	-	-	$325	$406
2 to 3	-	-	$315	$331
Under 2	-	-	$284	$331

Source: The 42nd Annual Survey of Law Firm Economics, 2014
www.justice.gov/usao-dc/file/796471/download
www.laffeymatrix.com
Note: For comparison purposes, the Salazar Matrix rates are displayed using the USAO Matrix experience categories.

20. Table 3 reveals that the USAO Matrix rates are well above the national average and median billing rates for bankruptcy litigation, often by as much as $100 or more per hour. Thus even if the rates for complex federal litigation are similar to rates in one of the highest paying litigation specialties, the figures represented in the USAO Matrix are still sufficiently high to compensate for such legal services.[13]

13 It should be noted that the only other litigation sub-specialty in the SLFE with rates consistently higher than those of bankruptcy is "other litigation." While I do not present those rates in table format here, the USAO Matrix rates are also well above the national average and median billing rates for this highest paying specialty of litigation. (The 42nd Annual Survey of Law Firm Economics, p. 167)

ii) The USAO Matrix is More Precise in its Measure of Attorney Experience

21. Both the USAO and Salazar Matrixes provide attorney fees based on categories of attorneys' years of experience. The USAO Matrix begins with an experience level of "less than 2 years" and has "31+ years" as its most experienced category, with a total of nine individual experience categories. In contrast, the Salazar Matrix has five individual experience categories beginning with "1-3" years and ending with "20+" years.

22. Survey data indicate that attorney billing rates indeed do go up with each year of experience. For example, the 2014 national hourly billing rate for individuals with 21 to 30 years of experience was $387, while the rate for individuals with 31 or more years of experience was $430.[14] Despite these differences, the Salazar Matrix would combine individuals in each of these experience levels into its single "20+" years category. The USAO Matrix by contrast has attorneys with 21 to 30 years of experience in one category and those with 31+ years of experience in another. Having more narrowly defined categories of years of experience enables the USAO Matrix to more accurately capture an individual attorney's fees.

iii) The PPI-OL used by the USAO Matrix is Superior to the CPI-LS used by the Salazar Matrix for Measuring Pricing Changes in the Relevant Market

23. The USAO Matrix is preferable to the Salazar Matrix in its chosen inflation index for updating billing rates each year. When using indices to update prices economists try to use the most specific index available. In this regard, an index that tracks pricing changes for federal litigation services in the Washington, DC area would be ideal. Since such an index is not available it is necessary to seek a close substitute. Mr. Kavanaugh states that the PPI-OL and CPI-LS are both useful for measuring changes in fees charged for complex federal litigation. I disagree with this. As I explain in more detail below, the PPI-OL is superior to the CPI-LS in this regard.

24. While the PPI-OL does not track pricing changes solely for federal litigation services, it does track overall inflationary trends in most areas of law, including constitutional law, environmental law, bankruptcy, and other types of federal litigation. Unlike the PPI-OL, the CPI-LS utilized by the Salazar Matrix does not track pricing changes of federal litigation. The CPI-LS is a sub-component of the broader national CPI published by the

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14 The 42nd Annual Survey of Law Firm Economics, pp. 136, 154.

BLS. The national CPI is a measure of the changes in prices paid by urban consumers for a market basket of consumer goods and services such as milk, candy, bedroom furniture, and tobacco products. "Legal services" is one such consumer service in the CPI's market basket, and price changes over time for these services are what is being measured in the CPI-LS used by the Salazar Matrix. Despite the generic title of "Legal Services" used by the BLS, the CPI-LS does not purport to measure the types of legal services at issue in this matter, or in any case in federal litigation. Instead, the CPI-LS is based on price movements for personal legal services in several urban centers in the United States. The "pre-selected" services tracked by the CPI-LS are legal services that may be used by typical household consumers in a given year, such as wills, uncontested divorces, powers of attorney, and traffic violations.[15] There is no reason to expect that pricing changes of consumer legal services tracks pricing changes of the services at issue here.[16]

25. In measuring pricing changes for consumer legal services, the CPI-LS is not able to track the forces of supply and demand for federal litigation services. The demand for the types of personal legal services covered by the CPI-LS come from people who need help with particular kinds of cases (such as uncontested divorce), and the supply of personal legal services comes from lawyers with knowledge of local procedures and law for those kinds of cases. By contrast, the demand for federal litigation comes from individuals or corporations who need help with such intricate issues as are present in certain kinds of civil rights or class action litigation, and the supply of legal services for these cases comes from lawyers with experience in those areas. Because of legal specialization and

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15 The BLS states that "The consumer price index program (CPI) calculates price indexes for legal services fees. These price indexes are primarily based on the price movement of the following specific flat-fee legal services. These pre–selected services are non-business related and include: 1. Preparing a brief, 2. Attending a deposition, 3. No fault or uncontested divorce, 4. Prenuptial agreement, 5. Wills and trusts, 6. Living wills, 7. Power of attorney, 8. Driving under the influence (DUI), 9. Traffic Violations, 10. Personal Bankruptcy, 11. Immigration/work visas." (Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 18)

16 It has been suggested by one judge that using the pricing of consumer legal services to measure changes in the price of complex litigation is conservative and that the inclusion of such "comparatively inexpensive" services in the CPI-LS means that prices for complex federal litigation rise more rapidly than the overall CPI-LS would suggest. (Memorandum Opinion, *Laura J. Makray v. Thomas Perez,* Case No. 12-520 (D.D.C. February 8, 2016) pp.47-48) The implication is that the rates in the Salazar Matrix may be lower than actual rates because of the use of the CPI-LS. This argument confuses the price of a service with the change in the price of a service. While consumer services may indeed be less in price than more complex services, there is no reason to believe that the *change* in the price of consumer legal services is lower (or greater) than the change in the price of complex services. The best way to measure the change in prices of complex federal litigation services is to measure price movements in as close a market as possible. The CPI-LS does not allow for that.

the skills necessary to supply specific legal services, there is no reason to expect that lawyers who supply federal litigation services also supply, in a professional, equally compensated capacity, personal legal services, such as preparation of wills or defense of traffic tickets. Due to the importance of local rules as well as the convenience of the client, consumer legal services tend to be regional in nature. An individual seeking legal assistance for a traffic violation or an uncontested divorce, for example, will most commonly seek a local attorney. There is no reason to believe that an attorney in Chicago, for example, would (or even could) provide these types of services to an individual in Los Angeles, or that an individual consumer in Los Angeles would seek an out-of-state attorney for such personal services.

26. Moreover, the specific components necessary to provide a consumer legal service may also differ by region. A no-fault divorce, for example, may require different attorney time and expense commitments in one region versus another because of local laws that require different filings, categories for no-fault, etc. Thus the flat-fee charged for such a service (which is what the CPI-LS measures) may be different by locality simply because the services required are different.

27. Because of the regional nature of personal legal services as well as differences in local legal requirements, consumer legal fees are unlikely to be uniform nationwide. The CPI-LS, by averaging price changes across many different cities, is simply providing a national urban average. There is no reason to expect that this average appropriately reflects the Washington, DC area or any other particular city.

28. The PPI-OL is also superior in that it more accurately captures the purchasers and sellers of the relevant services and the overall market trends of federal litigation services. On the purchaser side, the PPI-OL measurers pricing changes for services purchased by all types of entities, including consumers, government agencies and corporations. In contrast, the CPI-LS measures pricing changes for services purchased only by consumers. On the seller side, the PPI-OL is more accurately captures the market for federal litigation services. The PPI-OL measures pricing changes for services provided by individuals at law firms, including partners, associates and paralegals, while the CPI-LS measures pricing changes for services provided not only by law firms but also by non-lawyer legal service firms.[17]

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17 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, pp. 18-20.

29. A further reason that the PPI-OL is superior to the CPI-LS is that it more accurately measures the various pricing schemes used by attorneys in federal litigation matters. The purpose of the USAO Matrix and the Salazar Matrix is to measure reasonable actual hourly rates of lawyers. The CPI-LS used by the Salazar Matrix does not measure pricing changes in hourly rates, and instead is "primarily based on the price movements of the specific flat-fee legal services."[18] (Emphasis added) To determine prices for the CPI-LS, the BLS contacts consumer-oriented attorneys and records prices they charge for a defined "procedure" (such as a will). In other words, the CPI-LS tracks flat-fees for an entire service, not hourly rates.

30. The flat-fee tracked by the CPI-LS covers all the time spent to provide the service and may include other charges, such as travel expenses, document and filing fees, and postage costs. A change in local laws, such as requirements to obtain a divorce, may entail a change in the amount of time or expense necessary to render the service. Thus, the flat-fee charged for a specific legal service can change simply because of changes in the expected time and expenses needed to perform the service, rather than because of any change in hourly rates. For these reasons, a flat-fee index such as the CPI-LS can change at a different rate than hourly prices – even for the exact same type of legal service being performed.

31. At most law firms, flat-fee billings account for a small minority of gross billings.[19] For example, in 1998 88% of Washington, DC law firms received 10% or less of gross billings in the form of flat-fees.[20] A 2009 survey indicated that for those Washington, DC area firms that do offer alternative billing, only 8% of revenue came from alternative billings, including flat-fees.[21] Of course, Washington, DC law firms that did not offer flat-fee services at all received 0% of their revenue from such billings.

32. In contrast to the CPI-LS, the PPI-OL tracks pricing changes for all types of pricing schemes used by law firms, including hourly rates. Survey respondents to the

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18 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 13.

19 Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, National Edition, June 1, 1998, p. xi. This survey was cited in the *Salazar v. District of Columbia* decision.

20 Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, p. xi.

21 2009 National Law Journal Billing Survey.

questionnaire for the PPI-OL are asked to provide the pricing model used by the firm, whether it be hourly rates, flat fees, contingency fees, retainer fees or hybrid fees.[22]

33. The PPI-OL is also superior to the CPI-LS in that it seeks to specifically take account of the discount rates and contingency fees commonly offered by law firms. The BLS states that when collecting data on standard rates for the PPI-OL, the "realization rate or discount rate" should also be collected.[23] In contrast, according to the BLS, discounts are not incorporated into the CPI-LS data unless the contacted attorney "routinely" gives one for a specific service. It is my understanding that contingency fees are not included at all in the CPI-LS.

34. Surveys of law firms reveal that contingency fees and other alternative fee arrangements are common practice. In a 2008 survey of the largest law firms in the nation, 73% of respondents stated that they provide discounted hourly rates. Within Washington, DC, 64% of firms offer such discounts. Contingency fees are also commonplace. Of the 2008 survey respondents, 70% of firms nationwide, and 82% of firms in Washington, DC obtain revenue through contingency billings.[24] A more recent survey finds that 97% of firms use some type of non-hour based billing.[25] The BLS itself states that "in practice law firms usually discount their rates or fees using a discount rate or a realization rate."[26] The PPI-OL is superior to the CPI-LS in taking account of these realities of alternative billing arrangements in federal litigation.

35. Overall, the USAO Matrix is superior to the Salazar Matrix for estimating attorneys' fees in federal litigation cases. The USAO Matrix is based on more current and reliable survey data, more precisely aligns its billing rates to the years of experience of attorneys, and uses an inflation index that better captures the pricing changes of the relevant market.

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22 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 20.

23 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 21.

24 2008 National Law Journal Billing Survey. See also Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, 1998.

25 2016 Law Firms in Transition, An Altman Weil Flash Survey, p. 70.

26 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 14.

III. Plaintiffs' Motion and Declaration of Mr. Kavanaugh

36. Plaintiffs' Motion for attorneys' fees consists of the Plaintiffs' Memorandum in Support of their Motion for an Award of Litigation Costs, Including Attorneys' Fees and Related Expenses ("Plaintiffs' Memorandum") as well as supporting exhibits. These materials provide select rates collected by the attorneys in this matter from various public and private sources, as well as billing rates from declarations of individual attorneys. Plaintiffs' attorneys indicate that collectively these data support use of the Salazar Matrix for determining attorneys' fees in this matter. In this section I outline the unreliability and limitations of the plaintiffs' selected data.

i) Plaintiffs' Selected Data Points are not Reliable

37. Plaintiffs' Exhibits 47 to 49 in the Plaintiffs' Memorandum provide a summary of the data offered by plaintiffs to support the use of the Salazar Matrix for determining attorneys' fees. The data generally are derived from either bankruptcy reports (Plaintiffs' Exhibits 43 to 45) or fee applications in other matters (Plaintiffs' Exhibits 50 to 65).

38. Data used from Plaintiffs' Exhibits 43 to 45 are derived from Westlaw CourtExpress Legal Billing Reports ("Westlaw Bankruptcy Reports"). There are several flaws in plaintiffs' use of these bankruptcy billing rates. First, as discussed earlier, bankruptcy rates are one of the highest billing rates in any area of law and as such are greater than most rates in other areas of complex federal litigation. Moreover, billing rates displayed in bankruptcy reports tend to underestimate rates that are actually collected in non-bankruptcy filings. This is because in bankruptcy cases there is not an opposing party or paying client that forces attorneys into offering customary discounts.[27] Rates net of these customary discounts ("realization rates") are generally much lower than the billing rates seen in bankruptcy reports. This difference between billing rates and realization rates is discussed in more detail below. Almost 2/3 of the rates summarized in Exhibits 47 and 48 are derived from these Westlaw Bankruptcy Reports.

39. Data used from Plaintiffs' Exhibits 50 to 65 are derived from fee applications in other matters and attorney declarations. Plaintiffs do not appear to use all rates provided in these source exhibits and provide no explanation for these omissions. For example, Exhibit 47 indicates that attorneys with 20+ years of experience at the firm of Relman,

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27 Harper, Steven, The Dirty Little Secret of Law Firm Billing, The American Lawyer Daily, 2016.

Dane & Colfax have a billing rate of $825 per hour. The source cited for this rate is Exhibit 57, but this exhibit shows other Relman attorneys with 20+ years of experience with billing rates of $575 to $700.[28] It appears that plaintiffs used the highest single billing rate of an attorney at Relman, Dane & Colfax to extract the firm's billing rate of $825 displayed in Exhibit 47 but ignored the rates of all other firm attorneys with similar years of experience.

40. Another problem with using the data in fee applications is that the rates are for *requested* fees. To the best of my knowledge, plaintiffs have not provided with their motion any basis to determine whether these rates were actually granted by the court.

41. Data in both the Westlaw Bankruptcy Reports and the fee applications include information on years of experience and attorney title. Plaintiffs state that they used rates for attorneys that were labeled partners, associates or paralegals, but did not use rates for other attorney titles such as "senior counsel" or "of counsel."[29] Plaintiffs do not provide a reason for limiting the data in this way and, moreover, since both the Salazar and USAO Matrixes are based on years of experience and not job title, this limitation makes no sense.

42. The exclusion of data for attorneys that are not labeled partner or associate means that many data points were omitted from Exhibits 47 and 48. For example, plaintiffs indicate in Exhibit 47 that attorneys with 20+ years of experience at the firm of Ogletree Deakins bill at a rate of $525 per hour. But Exhibit 44, the source for this rate, shows that other Ogletree attorneys with similar experience, but labeled "of counsel," bill at the lower rate of $380 per hour. These lower rates were not included in Plaintiff's Exhibits 47. In general, the exclusion of such data tends to inflate the rates shown in Plaintiffs' Exhibits 47 and 48 since individuals who are labeled "of counsel" or "senior counsel" tend to bill at lower rates than partners or associates with similar years of experience.

ii) Realization Rates are Lower than Billing (Published) Rates

43. The rates in the plaintiffs' source materials of bankruptcy reports, fee applications, and attorney declarations are generally published billing rates, which often do not reflect

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28 Rates for these attorneys are listed on the last page of Exhibit 57. Years of experience for these attorneys were determined using www.relmanlaw.com and www.martindale.com.

29 Plaintiffs' Exhibit 1, page 83.

actual realization rates. Plaintiffs state that the bankruptcy reports reflect "billing rates" and that the affidavits and declarations are in response to a request of certain partners about their firms' "billing rates."[30] In the Declaration of Megan Cacace, the attorney discusses various "billing rates" and states that the declaration's listed rates are what her firm "customarily charges."[31] Similarly, in his affidavit, Barry Coburn states that he is knowledgeable about "billing rates" at his firm and other firms.[32] Using these billing rates as a source for acceptable attorney rates is misleading since firms customarily discount these billing rates and in turn have realization rates that are much lower than the published rates.

44. A 2008 law firm survey shows that 73% of firms nationally and 64% of firms in Washington, DC provide discounted hourly rates.[33] The BLS itself states that "in practice law firms usually discount their rates or fees using a discount rate or a realization rate."[34] A 2015 study shows that 21% to 30% of all law firm fees come from discounted rates, and that for larger firms (defined as 250 or more lawyers) discounted fees represent 31 to 40% of total fees.[35]

45. Plaintiffs' own source materials provide an example of how discount rates are not the same as published billing rates. In Plaintiffs' Exhibit 45, an Akin Gump attorney with 20+ years of experience shows a billing rate of $410 per hour. Yet in Exhibit 47 the plaintiffs list Akin Gump attorneys with 20+ years of experience as having billing rates of $730-$825 per hour. In a footnote plaintiffs explain that they ignored the lesser rate of $410 per hour because "plaintiffs have confirmed that this is not the partners' standard hourly rate."[36]

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30 Plaintiffs' Exhibit 1.

31 Plaintiffs' Exhibit 57.

32 Plaintiffs' Exhibit 68.

33 2008 National Law Journal Billing Survey.

34 Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, 2013, p. 14.

35 2016 Law Firms in Transition, An Altman Weil Flash Survey, p. 69.

36 Plaintiffs' Exhibit 47, footnote 5.

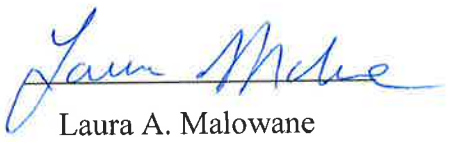
46. While discounting may have been a small issue in the late 1980s when the Salazar Matrix was developed, it is indeed a large phenomenon now. One study shows that while 2005 collection rates totaled 93% of standard rates, by the end of 2015 they were down to 83%.[37] Another study states that increasing client resistance to billing rates "is reflected in growing demands for discounts, plummeting realization rates, and a noticeable slowing in the growth of collected rates."[38] As stated by a legal commentator on this subject, "How much a firm bills doesn't matter; what it actually brings in the door does."[39] The prevalence of these discounts indicates that the realization rates of attorneys in federal litigation matters are much lower than the published billing rates offered in Plaintiffs' Motion.

CONCLUSION

47. The USAO Matrix is the appropriate matrix to use for purposes of determining plaintiffs' attorney fees in this matter. As compared to the Salazar Matrix, the USAO Matrix is based on more current and reliable survey data, more precisely aligns its billing rates to the years of experience of attorneys, and uses an inflation index that better captures the pricing changes of the relevant market. The Salazar Matrix is not appropriate for determining plaintiffs' billing rates and the data provided by plaintiffs in support of their suggested use of the this matrix is flawed and not reliable.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 9, 2017



Laura A. Malowane

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37 The actual collection rates in 2015 may be even lower than 83% once bankruptcy practices are excluded. (Harper, Steven, The Dirty Little Secret of Law Firm Billing, The American Lawyer Daily, 2016)

38 2016 Report on the State of the Legal Market, Georgetown Law, p. 15.

39 Harper, Steven, The Dirty Little Secret of Law Firm Billing, The American Lawyer Daily, 2016.

Appendix 1

Curriculum Vitae of Dr. Laura A. Malowane

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Ph.D. Economics, 1998
Princeton University

M.A. Economics, 1995
Princeton University

MBA, 1991
York University, Schulich School of Business

LL.B., 1991
York University, Osgoode Hall Law School

B.A. Economics, 1987
York University

Professional Experience

2005-Present:	Vice President, Economists Incorporated
1998-2005:	Senior Economist, Economists Incorporated
1997-1998:	Lecturer, Princeton University, Woodrow Wilson School of Public Policy
1994-1997:	Senior Economist, Princeton Economics Group

Professional Experience (continued)

1992-1993:	Law Clerkship, McMillan Binch, Barristers & Solicitors
1989:	Economic Analyst, Environment Canada, Government of Canada
1988:	Economic Analyst, Department of Regional Industrial Expansion, Government of Ontario

Articles and Papers

"Estimating Lost Earnings for a Single Plaintiff," *Economists Ink*, Spring 2015 (with Benjamin S. Shippen).

"Wrongful Death Damages and Personal Consumption Offsets," *Economists Ink,* Winter 2015.

"E-Commerce Tax Implications of the Marketplace Fairness Act," *Economists Ink*, Winter 214.

"Supreme Court Ruling Concerns Antitrust Fines and Evidence of Economic Effects," *Economists Ink*, Fall 2012.

"Calculating Awards of Attorney Fees," *Economists Ink*, Summer 2011.

"Resale Price Maintenance and the Rule of Reason," ABA Section of Antitrust Law, *Economics Committee Newsletter,* Volume 10, Number 1, Summer 2010 (with Allison Holt).

"Assessing Monopolization Claims in the Face of Innovation," *Economists Ink*, December 2009 (with Barry C. Harris and Matthew B. Wright).

"Resale Price Maintenance and the Rule of Reason," *Economists Ink*, Summer 2008.

"Geographic Market Definition In Markets with Imports: Evolution of Antitrust Agency Analysis," *The Threshold*, 2007 (with Philip Nelson and Robert Kneuper).

"Imports and Geographic Market Definition," *Economists Ink*, Spring 2007.

"The Deterrence Value of Punitive Damages," *Economists Ink*, Fall 2001 (with Jonathan Walker).

Articles and Papers (continued)

"Exporters to the U.S. Apparel Industry: The Significance of Geographic Proximity," *Economists Ink*, Fall 1998.

"Foreign Competition, Domestic Market Power and Antitrust Policy: A Survey and Analysis," (Princeton University, Spring 1998).

"International Competition, Antitrust Policy and Asymmetric Information: When are Foreign Firms a Sufficient Competitive Discipline?" (Princeton University, Fall 1997).

"Foreign Competition in the U.S. Apparel Industry,"(Princeton University, Spring 1998).

Testimony

Caroline Herron v. Fannie Mae - Provided expert report and deposition testimony on behalf of defendant regarding damages in a wrongful termination and defamation claim, United States District Court for the District of Columbia, Civil Action No. 10-943 (RMC), 2015.

Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice – Provided declaration on behalf of defendant regarding proper methodology and data sources for assessing attorneys' fees, United States District Court for the District of Columbia, Civ. No. 12-1491 (JDB), 2015.

Wilma Eley v. District of Columbia – Declaration regarding attorneys' fees in a separate matter (Civ. No. 12-1491) filed by United States in support of its Statement of Interest, United States District Court for the District of Columbia, Civil Action No. 11-0309 (BAH), 2015.

Laura J. Makray v. Thomas E. Perez, Secretary of Labor – Provided declaration and supplemental declaration on behalf of defendants regarding rate matrixes to use for assessing attorneys' fees, United States District Court for the District of Columbia, Civil Action No. 12-0520 (BAH), 2015.

Premium Pet Health v. All American Pet Proteins, et al. – Provided report and rebuttal report on behalf of plaintiff regarding damages and lost profits due to tortious interference, employee misconduct and breaches of loyalty, District Court, Denver County, Colorado, Case Number: 2014cv31356, Div./Ctrm.: 259, 2015.

Testimony (continued)

Citizens for Responsibility and Ethics in Washington v. U.S. Department of Veterans Affairs – Provided declaration on behalf of defendants regarding rate matrixes to use for assessing attorneys' fees, United States District Court for the District of Columbia, Civil Action No. 08-1481 (PLF), 2015.

Steven Farrell v. Great Eastern Resort Corporation, et al. – Provided report on behalf of plaintiff to address report on behalf of plaintiff to address antitrust and economic issues in the timeshare industry, in the United States District Court for the Western District of Virginia, Harrisonburg Division, No. 5:13 CV 00075, 2013.

Gary Martin v. United States of America – Provided expert report and deposition testimony on behalf of defendant regarding damages in a wrongful death claim, in the United States District Court for the District of New Hampshire, No. 11-CV-593-JL, 2013.

Elizabeth Abel, et al. v. CSX Transportation, et al. – Provided declaration on behalf of defendants regarding punitive damages in a railway accident matter, in the Philadelphia County Court of Common Pleas, No. 000769, 2013.

Fred E. Evans, et al. v. United States, and Edward L. Bright, II et al. v. United States – Provided declaration on behalf of plaintiffs regarding the competitive market rates of attorneys, in the United States Court of Appeals for the Federal Circuit, No. 2010-1303 and No. 2010-1385, 2012.

Cynthia Hyland v. Raytheon Company, Raytheon Technical Services Company, Heidrick & Struggles, Inc., Bryan J. Even, and Laura Miller – Provided report and trial testimony on behalf of defendant regarding damages in retrial of defamation and wrongful termination case, in the Circuit Court for Fairfax County at Law No. 221038.

Michael Akosile v. Armed Forces Retirement Home – Provided report on behalf of defendants with respect to the state of the job market for health care workers, in the United States District Court for the District of Columbia, No. 09-CV-173 (RBW), 2012.

Testimony (continued)

Steven J. Hatfill, M.D., v. John Ashcroft, et al. – Provided report and deposition testimony on behalf of the Department of Justice regarding damages stemming from alleged violation of constitutional rights and defamation of an individual labeled as a person of interest in the investigation of the mailing of lethal Anthrax letters in the United States, United States District Court for the District of Columbia, Civ.A. No.03-1793 (RBW).

Beth M. Norden v. G. Wayne Clough, Secretary, Smithsonian Institution – Provided affidavit on behalf of the Smithsonian Institution addressing acceptable methods for assessing attorneys' fees, in the United States District Court for the District of Columbia, Case No. 05-1232 (RMC).

Dorothy L. Biery, et al, and Jerramy and Erin Pankratz, et al., v. The United States – Provided declaration on behalf of plaintiffs regarding the relevant market for attorney fees and the reasonableness of current billing rates, in the United States Court of Federal Claims, No. 07-693L and 07-675L, 2012.

Mohammed Amin Kakeh v. United Planning Organization – Provided affidavit regarding the appropriate method to use to value attorney fees, in the United States District Court for the District of Columbia, No. 1:05-CV-1271 (GK/JMF).

Margaret A. Burnette v. Vangent – Provided expert report on behalf of defendant on the valuation of damages stemming from allegations of sexual discrimination and wrongful termination, in the United States District Court for the Eastern District of Virginia (Alexandria Division), No. 1:10 CV 1079, 2011.

Reginald G. Moore, et al. v. U.S. Department of Homeland Security – Provided declaration on behalf of the Department of Homeland Security regarding appropriate statistical methods in relation to a discrimination matter of Secret Service employees, in the United States District Court for the District of Columbia, Civ. No. 000-953 (RWR/OAR), 2010.

Queen Anne's Conservation Association v. United States Department of State – Provided declaration on behalf of defendant regarding the appropriate use of the Laffey Matrix for the calculation of attorney's fees, in the United States District Court for the District of Columbia, No. 10-0670 (CKK), 2010.

Oscar Salazar, et al. v. District of Columbia, et al. – Provided affidavit on behalf of defendants regarding the appropriate method for determining attorneys' fees, in the United States Court for the District of Columbia, No. 93-452 (GK), 2010.

Testimony (continued)

American Thoracic Society v. American Lung Association – Provided affidavit on behalf of defendant regarding the use of discount rates and consumer price indexes to properly capture the time value of money in present and future income values, in the Superior Court of the District of Columbia, No. 2009 CA 004543 B, 2010.

Dick Anthony Heller v. The District of Columbia – Provided declaration on behalf of defendant in relation to the appropriate methods for valuing attorneys' fees and the usage of the Laffey Matrix, in the United States District Court for the District of Columbia, No. 03-CV-0213-EGS, 2010.

Gist and Herlin Press, et al. v. Jeffery D. Poland and The Pension Service, Inc. - Provided economic analysis and deposition testimony on behalf of plaintiffs regarding damages stemming from erroneous pension funding estimates, in the Superior Court for the Judicial District of Waterbury, No: X10 UWY-CV-05-40101305.

Cynthia Hyland v. Raytheon Company and Raytheon Technical Services Company – Provided report, trial and deposition testimony on behalf of defendant regarding damages in defamation and wrongful termination case, in the U.S. District Court for the Eastern District of Virginia (Alexandria Division), No. 1:04CV1273, 2005; Circuit Court for Fairfax County at Law No. 221038.

Victoria Gray v. American Academy of Achievement – Provided affidavit on behalf of defendants regarding analysis of damages from breach of services contract, Superior Court of the District of Columbia, No. 04ca003012, 2005.

Neurology Services v. Fairfax Medical – Provided affidavit on behalf of defendant regarding economic losses in a breach of contract case, in the Circuit Court for Fairfax County, No. L220451, 2005.

Mario Panayutidis v. Bill Page Imports – Provided report on behalf of defendants regarding damages in a wrongful termination case, in the U.S. District Court for the Eastern District of Virginia (Alexandria Division), No. 1:05CV604, 2005.

Kevin T. Keleghen v. Sears, Roebuck and Co. – Provided affidavit and deposition testimony on analysis of economic losses on behalf of plaintiff in defamation and breach of contract case, Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois, No. 02L938, 2005.

Testimony (continued)

World Trade Center, Victims Compensation Fund: Raymond Murphy – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Dennis McHugh – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Robert Crawford – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Thomas Farino – Co-Authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: James Corrigan – Co-authored written expert testimony to the Victims Compensation Fund regarding economic losses to the family of a retired New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: John Moran – Co-authored written expert testimony to the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Nathaniel Webb – Co-authored written expert testimony to the Victims Compensation Fund regarding economic losses to the family of a Port Authority police officer that died on 9/11.

Section 201 Steel- Co-authored written expert testimony for the International Trade Commission regarding the financial and economic state of the domestic steel industry, 2001 (No. 201-TA-073).

Lockheed Martin/COMSAT – Co-authored written expert testimony to the Federal Communications Commission regarding an analysis of the competitive impact of a proposed merger in the satellite industry, 1999.

Honors and Awards

Princeton University Full Graduate Fellowship – 1997, 1996, 1995, 1994, 1993
Ontario Graduate Scholarship – 1991, 1990, 1988
York University Business School Dean's Honor Roll – 1991, 1990, 1988
York University Business School Proctor & Gamble Entrance Scholarship – 1987
York University Scholarship – 1987, 1986, 1985
York University Economics Award – 1987

Selected Consulting Matters

Asbestos and RICO Litigation – Performed damage analysis on behalf of plaintiff in a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 2012.

Sue O'Brien et. al. v. Leegin Creative Leather Products, Inc. – Assistance with liability and damages in resale price maintenance case, in the Eighteenth Judicial District Court, Sedgwick County, Kansas, Civil Department, No. 04CV1688.

Patrick J. Cunningham and Anton N. Zanki v. International Business Machines Corporation – Provided liability and damage analysis on behalf of defendant concerning alleged breach of contract of employee retirement benefits.

Unions and RICO Litigation – Performed damage analysis on behalf of plaintiff regarding contract interference and allegations under the Racketeer Influenced and Corrupt Organizations Act (RICO), 2011.

In Re: Ideal Mortgage Bankers, Ltd. – Performed damage analysis on behalf of defendant in class action case involving alleged violation of the Fair Labor Standards Act, 2008.

Lead Paint Litigation – Provided assistance in several individual cases with the estimation of damages from the use of lead in paints and pigments, 2007.

UPMC Acquisition of Mercy Hospital Assisted in Hart-Scott-Rodino and Pennsylvania Attorney General - Reviewed hospital transaction in Pittsburgh, Pennsylvania, 2007.

Selected Consulting Matters (continued)

Arizona Nursing Services Investigation and Litigation – Economic analysis on behalf of defendants in government investigation and private litigation of alleged monopsony purchasing of temporary nursing services, 2006.

Amazon Study: Taxation of E-commerce - Performed studies on effects of taxation on internet transactions of various sized firms, 2004, 2009, 2012, 2014.

John Jonson, et. al., v. Big Lots Stores, Inc. – Assisted in analysis on behalf of defendant concerning alleged violation of Fair Labor Standards Act, 2008.

In Re: Lockheed Meridian, MS Shooting Incident – Assisted with estimate on behalf of defendant regarding damages, 2006.

In Re: Robin Singh d/b/a Test Masters – Assisted on behalf of plaintiff concerning damages in standardized testing preparation industry, 2007, 2009.

Harrah's Entertainment, Inc./Caesars Entertainment, Inc. Merger – Assisted in Casino Control Commission, State of New Jersey, review of competition related to casino merger, 2005.

Estate of Peter Haskos, et al vs. Lee Jung, M.D. et al - Provided damage analysis for defendant in claim of wrongful death, State of Connecticut Superior Court Judicial District of New Haven, No. CV-01-0448262-5, 2004.

HealthAmerica v. Susquehanna Health System – Provided competition analysis for defendant in claim of monopolization, US District Court for the Middle District of Pennsylvania, No.4:CV-00-1525, 2001.

Alan Glazer et al. v. Dressbarn – Provided estimate of damages for women's apparel catalog retailer regarding unfair business practices, State of Connecticut Superior Court, No. CV-01-01690755, 2002.

Anderson v. Washington Post – Analysis of economic losses on behalf of defendants in employment discrimination case, US District Court for the District of Columbia, No. 02-0002718, 2002.

DataSafe, Inc. and David F. Muller v. Federal Express Corporation et al. – Provided estimate of damages on behalf of defendants concerning damages to internet security provider from breach of contract, commonwealth of Massachusetts, Middlesex Superior Court, No. 01-2590, 2001.

Selected Consulting Matters (continued)

Ertha Mae Williams v. CSX Transportation, Inc., et al. – Assisted with analysis on behalf of defendants concerning the economics of punitive damages, State of South Carolina, County of Hampton, No. 04-CP-25-267, 2004.

White v. Calomiris – Analysis for defendant concerning damages in wrongful injury case, Superior Court of the District of Columbia, No. 03-1833-mw, 2005.

Legi-Slate Inc. v. Thomson Information Services Inc. – Provided economic support on behalf of plaintiffs concerning damages to on-line content provider from breach of contract, US District Court for the District of Columbia, No. 99-1570, 2000.

Gordon v. Lewistown Hospital – Analysis for defendant in restraint of trade and tying claims of ophthalmologist, in the US District Court for the Middle District of Pennsylvania, No.1: CV99-1100, 2000.

Pineapple Antitrust Litigation – Assisted in analysis of alleged monopolization in pineapple industry, 2003, 2005.

Dow Chemical/Union Carbide Merger – Assisted in Hart-Scott-Rodino review of competition related to chemical merger, 1999-2000.

State of Alabama v. Exxon Corporation – Assisted in the estimation and economics of punitive damages arising from a royalty and lease dispute, 2001.

Roll International Corporation and Paramount Farms, Inc. v. Unilever United States, Inc., et al. – Provided economic support on behalf of defendants regarding business valuation and damages to a snack food manufacturer in a breach of contract and fraudulent misrepresentation suit, 2001.

Ronald O. Lewis v. Booz-Allen & Hamilton, Inc. – Assisted in liability and damage issues concerning a discrimination suit, US District Court for the District of Columbia, No. 1:99CV00713, 2000.

Emad Kowatli, M.D. v. Russell County Medical Center, et al. – Provided damage analysis for defendant in matter of physician's loss of hospital privileges, in the US District Court in the Western District of Virginia, No. 98-142-A, 1999.

Ahold/Pathmark Proposed Acquisition - Assisted in Hart-Scott-Rodino review of competition related to grocery chain acquisition, 2002.

Selected Consulting Matters (continued)

Greenlawn Funeral Home vs. Gobblers Knob Cemetery, et al. Provided economic support concerning claims of monopolization and tying in the cemetery industry, in the US District Court for the Western District of Missouri, Southern Division, No. 01-3258-CV-S-BB, 2002.

Section 201 Steel – Provided expert testimony before the ITC regarding the financial condition of the American steel industry, 2001.

Dr. Michael J. Galvin v. The New York Racing Association, Inc., et al. – Provided economic support on behalf of defendant regarding commercial damages in breach of due process and tortious interference suit, 2000.

Willie Brown, Jr., et al. v. General Motors Corporation, et al. – Performed economic analysis concerning lost NFL player earnings, 1999.

Compuware/Viasoft Proposed Acquisition – Competitive analysis for Compuware's attempted acquisition of Viasoft in the mainframe software industry, 1999.

Transocean/R&B Falcon Proposed Acquisition – Assisted in Hart-Scott-Rodino review of competitive impact of a proposed merger in the drilling rig industry, 2000.

R&D Business Systems et al. v. Xerox Corporation – Provided antitrust consulting for defendants in a class action suit alleging tying and monopolization in the copier and printer industries, 1996.

Re Brand Name Prescription Drug Antitrust Litigation – Assisted in economic analysis for selected defendants regarding Robinson-Patman litigation in prescription drug industry, 1999.

Roanoke Neurosurgeons – Analysis of competitive effect of proposed merger of neurosurgery practices, 2000.

Integrated Payment Systems, Inc. v. Travelers Express Company – Analysis of alleged predatory practices in the money order industry, 1999.

Selected Consulting Matters (continued)

Missouri HMOs – Analysis of product market and competitive effect of proposed merger of HMOs, 2000.

Regional Snacks Acquisitions – Analysis of antitrust implications of an investment group purchasing several salty snack manufacturers, 2000.

Oshkash/McNeilus Acquisition – Assisted in competitive analysis of acquisition in concrete mixer industry, 1999.

Appendix 2

Materials Considered

Plaintiff's Motion for an Award of Litigation Costs, Including Attorneys' Fees and Related Expenses, including accompanying memorandum and exhibits

Declaration of Michael Kavanaugh, *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, 2013

Memorandum Opinion, *Laura J. Makray v. Thomas Perez,* Case No. 12-520 (D.D.C. February 8, 2016)

2008 National Law Journal Billing Survey

2009 National Law Journal Billing Survey

The 42nd Annual Survey of Law Firm Economics, 2014

Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, National Edition, June 1, 1998

Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 - Offices of Lawyers, 2013

Principles of Survey Methodology, Winter 2014, UCLA, Applied Research Methods in the LA Labor Community

2016 Law Firms in Transition, An Altman Weil Flash Survey

Harper, Steven, The Dirty Little Secret of Law Firm Billing, The American Lawyer Daily, 2016

2016 Report on the State of the Legal Market, Georgetown Law

www.laffeymatrix.com

https://www.justice.gov/usao-dc/file/796471/download

www.relmanlaw.com

www.martindale.com

Appendix 3

USAO Matrix

USAO ATTORNEY'S FEES MATRIX – 2015 – 2017

Revised Methodology starting with 2015-2016 Year

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17
31+ years	568	581
21-30 years	530	543
16-20 years	504	516
11-15 years	455	465
8-10 years	386	395
6-7 years	332	339
4-5 years	325	332
2-3 years	315	322
Less than 2 years	284	291
Paralegals & Law Clerks	154	157

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.,* 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).

2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at http://www.bls.gov/ppi. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).

3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc*. 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, see note 9 below, the USAO rates for those years will remain the same as previously published on the USAO's public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, *i.e.*, the original *Laffey* Matrix updated by the CPI-U for the Washington-Baltimore area. *See Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, --- F. Supp. 3d ---, 2015 WL 6529371 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).

5. Although the USAO will not issue recalculated *Laffey* Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods prior to June 2015, provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.

6. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.

7. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, $150 for 2014-15) updated with the PPI-OL index. The formula is $150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).

8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.

9. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the USAO as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia

have relied on the USAO Matrix, rather than the so-called "*Salazar* Matrix" (also known as the "LSI Matrix" or the "Enhanced *Laffey* Matrix"), as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); *see, e.g., Joaquin v. Friendship Pub. Charter Sch.*, --- F. Supp. 3d ---, 2016 WL 3034151 (D.D.C. 2016); *Prunty v. Vivendi*, --- F. Supp. 3d ---, 2016 WL 3659889 (D.D.C. 2016); *CREW v. U.S. Dep't of Justice*, --- F. Supp. 3d ---, 2015 WL 6529371 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Pub. Charter Sch.*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne's Conservation Ass'n v. Dep't of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). *But see, e.g., Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). The USAO contends that the *Salazar* Matrix is fundamentally flawed, does not use the *Salazar* Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based.

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EXHIBIT
13

2017 Report on the State of the Legal Market

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The Center for the Study of the Legal Profession at the Georgetown University Law Center and Thomson Reuters Legal Executive Institute are pleased to present this 2017 Report setting out our views of the dominant trends impacting the legal market in 2016 and key issues likely to influence the market in 2017 and beyond.[1]

Introduction – A Decade of Fundamental Change

The year 2017 will mark the 10th anniversary of the beginning of the "Great Recession," an economic upheaval that started with the subprime mortgage crisis in 2006 and 2007 and led to the worldwide financial crisis in 2008 and beyond. According to the U.S. National Bureau of Economic Research, the recession technically began in December 2007 and lasted 19 months, through June 2009. It is now widely recognized as the worst global recession since World War II.

While the Great Recession had serious effects for economies and markets throughout the world, its impact on the legal market was particularly stark. The global economic meltdown brought to an abrupt end a long period of unprecedented prosperity for law firms – more than a decade of almost uninterrupted growth[2] in demand, revenues, and profits.[3] Corporate clients, under intense internal pressure to reduce the overall costs of legal services, insisted on taking control of their matters and managing the work of their outside law firms to a degree never before seen. Insisting on the necessity of receiving more value for their "legal spend," clients increasingly emphasized the need for greater efficiency, predictability, and cost-effectiveness in the legal services they received – *quality, of course, being assumed*.

This basic change in client attitudes, coupled with a broader shift from a "seller's" to a "buyer's" market for legal services, has resulted over the past decade in fundamental changes to the legal market itself. These changes are foundational and, in all likelihood, largely irreversible. The challenge for law firm leaders today is how best to adjust to these changes so as to respond to the new demands and expectations of their clients while maintaining the long-term health and success of their firms.

In considering this challenge, there is perhaps a helpful analogy to be drawn from the world of biology. In his seminal work *On the Origin of Species*, published in 1859, Charles Darwin laid the foundation for evolutionary biology with his observations of how species respond to changes in their surrounding environments. Interestingly, Darwin's conclusions are often misstated to assert that only the strongest of species tends to survive. In fact, Darwin observed that it was not necessarily the strongest of a species that emerged in the process of "natural selection" – nor, for that matter, the largest nor the smartest. Rather, the species with the best chances of survival were those that were the most *adaptable* to changes in their environments.

Obviously, there are problems in trying to apply Darwin's ideas literally to other fields, as evidenced by the terrible experiments with so-called "social Darwinism." As an analogy for the challenge faced by law

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1 The Center for the Study of the Legal Profession and Thomson Reuters gratefully acknowledge the participation of the following persons in the preparation of this Report: from the Center for the Study of the Legal Profession – James W. Jones, Senior Fellow (lead author) and Milton C. Regan, Jr. Professor of Law and Co-Director; and from Thomson Reuters – Justin Hines, Analyst – Thought Leadership; William Josten, Sr. Legal Industry Analyst – Thought Leadership; and Joe Blackwood, Jr. Account Executive/Industry Analyst – Thought Leadership.

2 The period of rapid growth was interrupted briefly by a short recession in 2000-2001 (related to the bursting of the so-called "tech bubble"), but that recession was fairly short-lived and, in any event, did not affect all firms in the legal market.

3 During this prolonged period, new demand for law firm services routinely grew at 4-6 percent per year, while both revenues and profits per partner averaged near double-digit annual growth.

firms in today's radically changed market environment, however, the survival of the most adaptable seems particularly fitting. At the end of the day, the firms that continue to prosper will most likely be those that are able to adapt most successfully to the evolving demands of their clients and the changed conditions of the marketplace. Those firms that are unable to do so will most likely become endangered species.

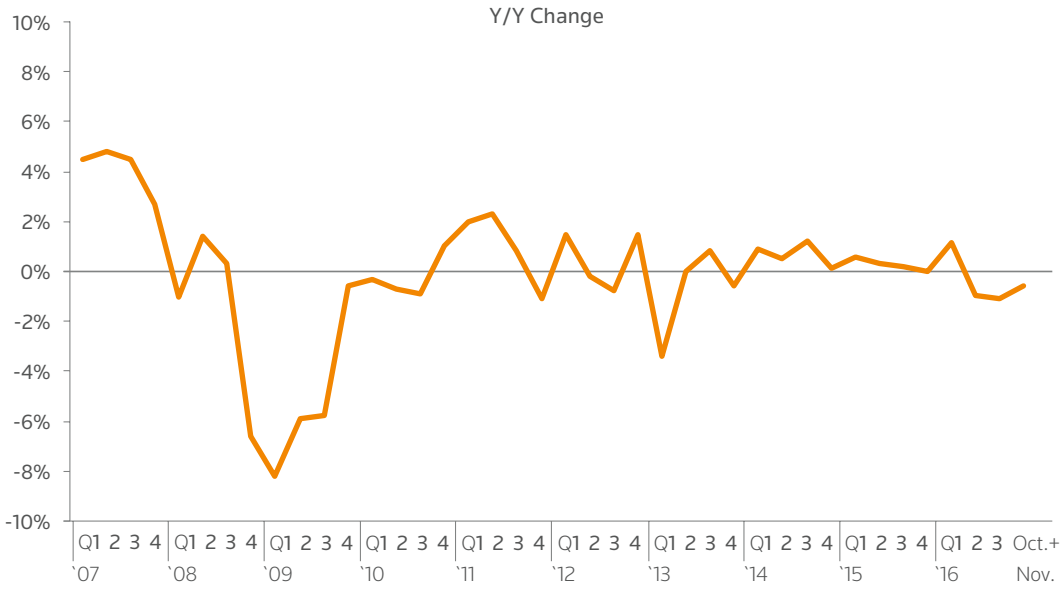
In the sections that follow, we set out the fundamental changes that we believe have occurred in the legal market over the past decade, the implications of those changes for law firms, and the kinds of adaptations we think that firms need to consider in order to remain successful in the decade to come.

Review of the Past Decade – Law Firm Financial Performance

Overall, the past decade has been a period of stagnation in demand growth for law firm services,[4] decline in productivity for most categories of lawyers,[5] growing pressure on rates as reflected in declining realization, and declining profit margins. On the brighter side, firms have on the whole done a fairly good job of managing their expense growth, at least during the second half of the decade.

The stagnation in demand growth for law firm services over the past decade, as tracked by Thomson Reuters Peer Monitor,[6] is shown in Charts 1 and 2, below. As can be seen in Chart 1, following the overall collapse in demand that occurred in 2009, from 2010 through 2016, demand growth – although showing occasional modest peaks and valleys – has been essentially flat. As indicated in Chart 2, demand growth in transactional work has been somewhat volatile, ranging relatively from a negative 4 percent to a positive 6 percent, while litigation growth has (except for one period in 2012) been consistently negative. It might be noted that this softness in demand for litigation services was evident even before the onset of the recession in 2007 and probably reflects client reactions to the exploding costs of litigation tied primarily to the expansion of electronic discovery.

Chart 1 – Growth in Demand for Law Firm Services



Source: Thomson Reuters Peer Monitor

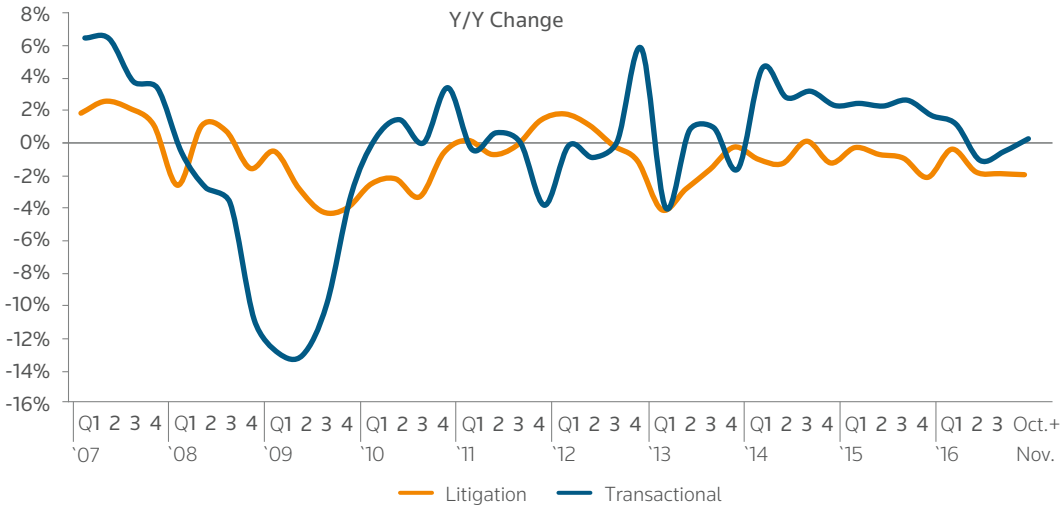
All timekeepers
Billable time type; non-contingent matters

4 For present purposes, "demand for law firm services" is viewed as equivalent to total billable hours recorded by firms during a specified period.

5 Productivity is determined by dividing the total number of billable hours recorded by all lawyers in a given category over a particular period by the total number of lawyers in that category.

6 Thomson Reuters Peer Monitor data ("Peer Monitor data") are based on reported results from 152 law firms, including 51 Am Law 100 firms, 44 Am Law Second 100 firms, and 57 additional midsize firms.

Chart 2 – Demand Growth for Transactional vs Litigation Services

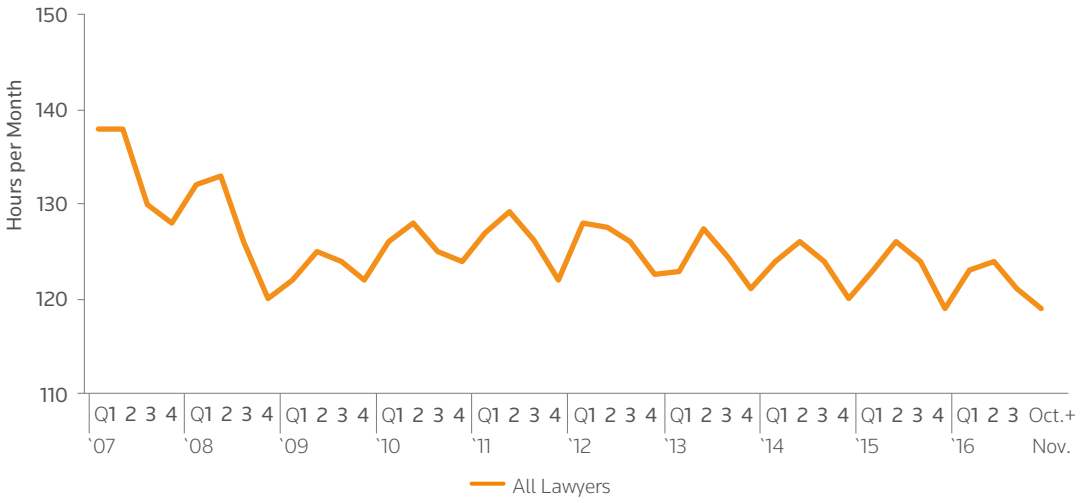


Source: Thomson Reuters Peer Monitor

All timekeepers
Billable time type; non-contingent matters

As to overall decline in lawyer productivity, as can be seen in Chart 3 below, over the past 10 years, the average billable hours worked by all lawyers across the market declined from 134 billable hours per month in 2007 to 122 through the late part of 2016. That equals a reduction of 144 billable hours per year per lawyer. If you multiply that total by the average worked rate ($463) for all lawyers in 2016, the "cost" to firms of the reduction in productivity over the past decade is currently running about $66,672 per lawyer per year.

Chart 3 – Billable Hours Worked per Lawyer

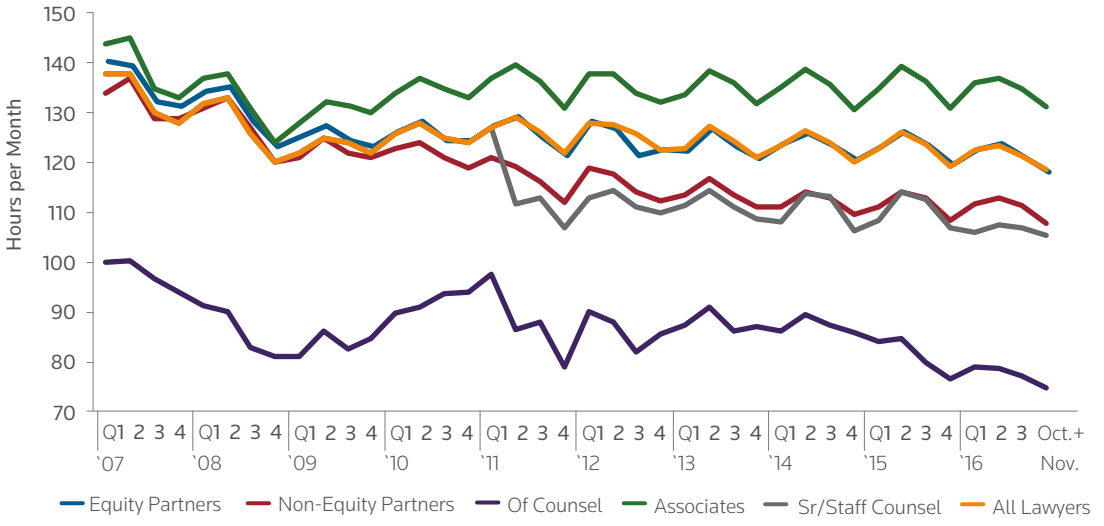


Source: Thomson Reuters Peer Monitor

Lawyers
Billable time type; non-contingent matters

Chart 4 below shows the productivity decline over the last decade broken out by category of lawyer. As can be seen, associate hours have held up better than all other categories, declining only 3 percent over the period, while hours for of counsel and senior/staff counsel have fared far worse, declining some 20 percent each over the decade. Hours for equity partners and non-equity partners declined 11 percent and 16 percent, respectively. These figures, of course, reflect staffing decisions made by firms over the last ten years, including decisions to reduce the overall number of associates and to flatten growth in the equity partner ranks.

Chart 4 – Billable Hours Worked per Lawyer by Category of Lawyer

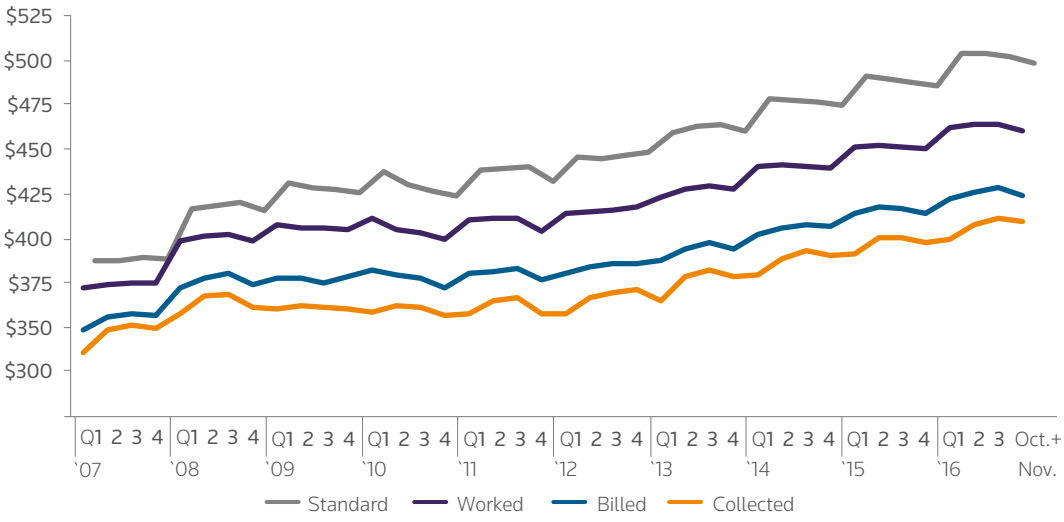


Source: Thomson Reuters Peer Monitor

Lawyers
Billable time type; non-contingent matters

Over the past 10 years, law firms have continued to raise their rates, albeit at a more modest pace than prior to 2008. As shown in Chart 5 below, over the decade, average standard rates[7] increased some 30 percent, while worked rates[8] have increased 24 percent, billed rates[9] 20 percent, and collected rates[10] about 18 percent. As can be seen, the lines on the right-hand side of Chart 5 are farther apart than the lines on the left-hand side. This reflects increasing client pushback to rate increases and suggests that realization rates must be declining. In fact, as shown in Chart 6 below, that is precisely what has happened over the past decade. Since 2007, collection realization as measured against standard rates, has declined 11 percent for Am Law 100 firms, 7.6 percent for Am Law Second 100 firms, and 7.3 percent for midsize firms. During 2016, the average realization rate for all firms has been consistently below 83 percent, the lowest level ever recorded.

Chart 5 – Rate Progression

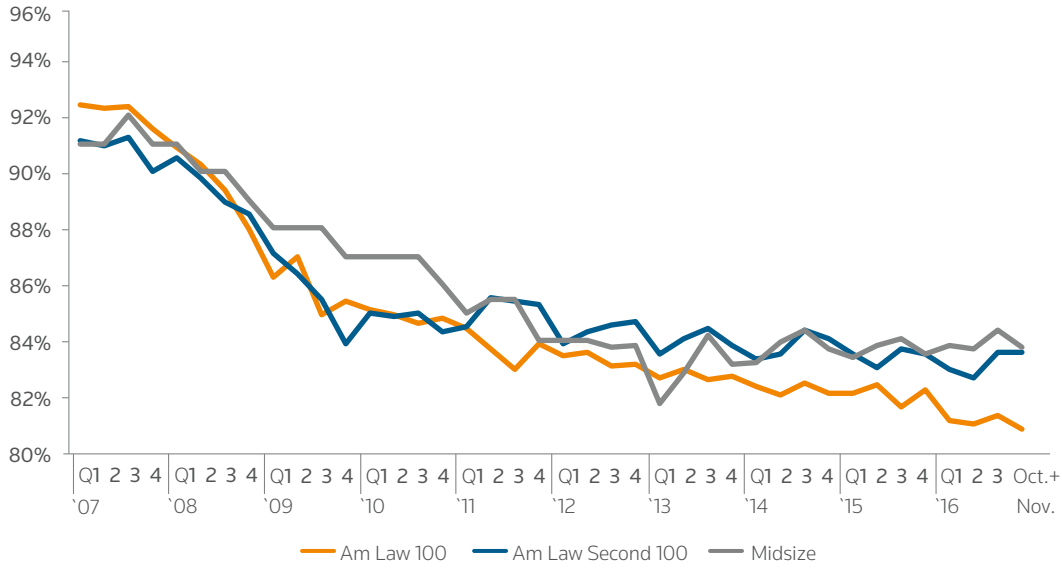


Source: Thomson Reuters Peer Monitor

Lawyers
Billable time type; non-contingent matters

7 Standard rates are a firm's published rates, without taking into account any discounts or adjustments.
8 Worked rates, also referred to as negotiated rates, are the rates that a firm agrees to with particular clients for work on given matters.
9 Billed rates are those rates that a firm actually invoices to its clients, reflecting any discounts or adjustments from worked rates that the firm considers appropriate.
10 Collected rates are those rates reflected by actual payments received by a firm from its clients.

Chart 6 – Collection Realization against Standard Rates

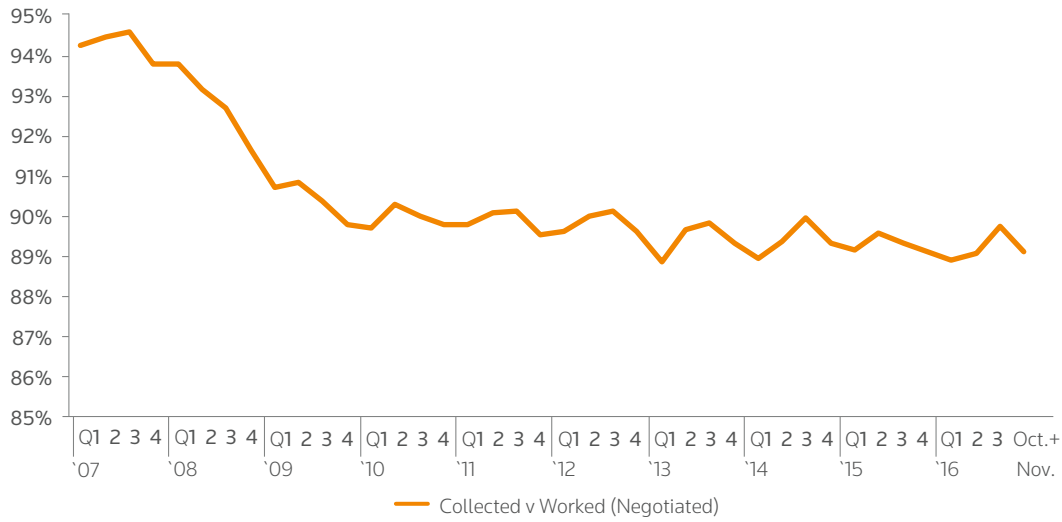


Source: Thomson Reuters Peer Monitor

Lawyers
Billable time type; non-contingent matters

In considering realization rates, it must be noted that comparing collection realization to standard rates undoubtedly produces a somewhat skewed result, since in most firms standard rates have long since ceased to have any real significance for most clients. Like "rack rates" in hotels, standard rates in law firms have effectively become nominal rates that are arbitrarily set and are almost never paid by any significant client. Accordingly, it is perhaps more meaningful to look at the decline in realization over the past decade as measured against worked rates, or the rates actually negotiated with clients. As shown in Chart 7 below, if so measured, while realization has dropped noticeably from a high of 94.6 percent in 2007 to the present level of 89.1 percent, the percentage drop is more modest than that shown in Chart 6 and, in fact, appears to have leveled off somewhat since 2013.

Chart 7 – Collection Realization against Worked (Negotiated) Rates



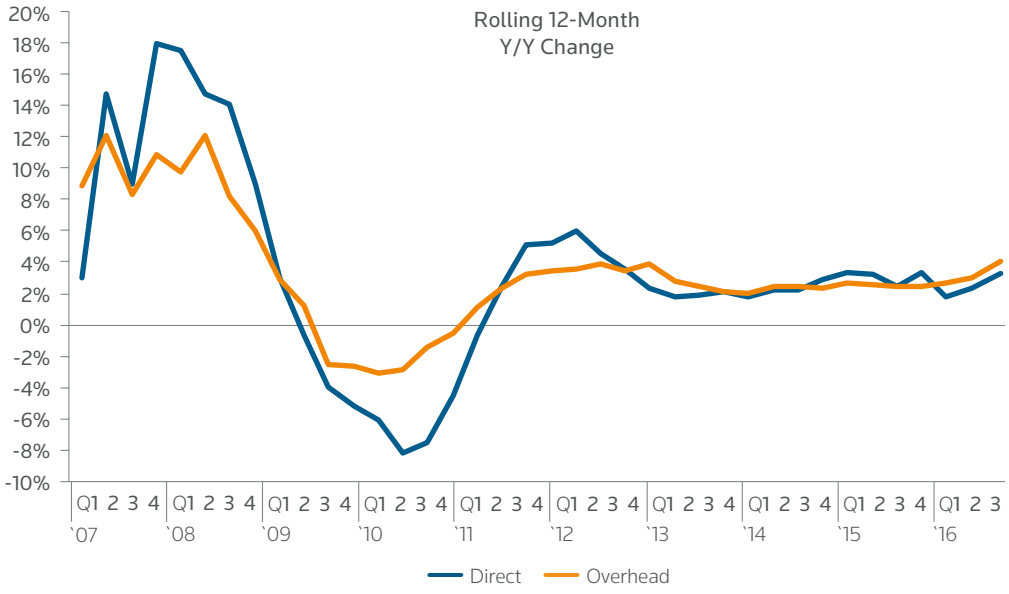
Source: Thomson Reuters Peer Monitor

Lawyers
Billable time type; non-contingent matters

As to expense growth, prior to the onset of the recession in late 2007 and early 2008, firms regularly experienced sharp increases in both direct and overhead expenses.[11] Indeed, as shown in Chart 8 below, in late 2007, firms were averaging 18 percent growth in their direct expenses and 10.9 percent growth in overhead, both significantly more than the growth in revenues firms were recording at the same time. Following the start of the recession, growth rates for expenses fell precipitously (especially in 2009 and 2010), characterized by massive layoffs of both lawyer and administrative staffs.

In 2011, expenses began to grow again, ultimately settling into a fairly flat annual growth pattern of 2 to 3 percent from 2013 through the present, outside of a small increase above that range in the second half of this year. This reflects strong expense management in firms in recent years.

Chart 8 – Expense Growth



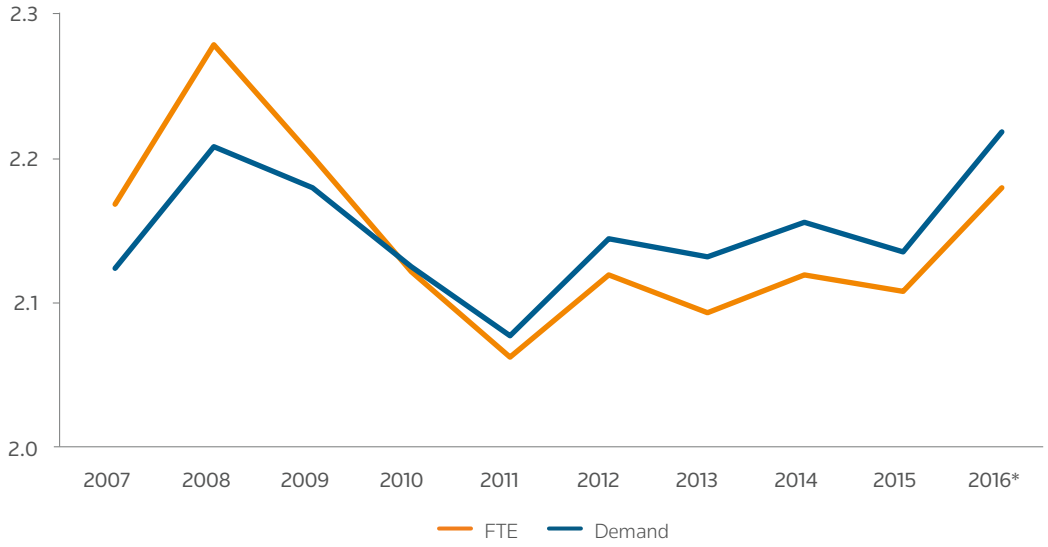
Source: Thomson Reuters Peer Monitor

Two other factors that contribute to law firm profitability – *viz.*, leverage and length of the billing and collection cycles – have, remained reasonably stable over the past decade, as shown in Charts 9 and 10 below. Chart 9 shows changes in leverage[12] over the period as measured in two ways – first, by FTE, showing the leverage ratio based simply on the numbers of lawyers involved; and second, by "demand," showing the leverage ratio based on the number of billable hours actually worked by the lawyers involved. As can be seen, over the course of the past decade, while the leverage ratios have varied somewhat, the range of change has been quite small. Also, the leverage ratios today are about where they were at the beginning of the decade.

11 Direct expenses refer to those expenses related to fee earners (primarily the compensation and benefits costs of lawyers and other timekeepers). Overhead expenses refer to all other expenses of the firm (including occupancy costs, administrative staff compensation and benefits, technology costs, recruiting expenses, business development costs, and the like).

12 For these purposes, leverage is defined as the ratio of all lawyers other than equity partners in a given firm to the equity partners in the same firm.

Chart 9 – Leverage (Lawyer to Equity Partner)

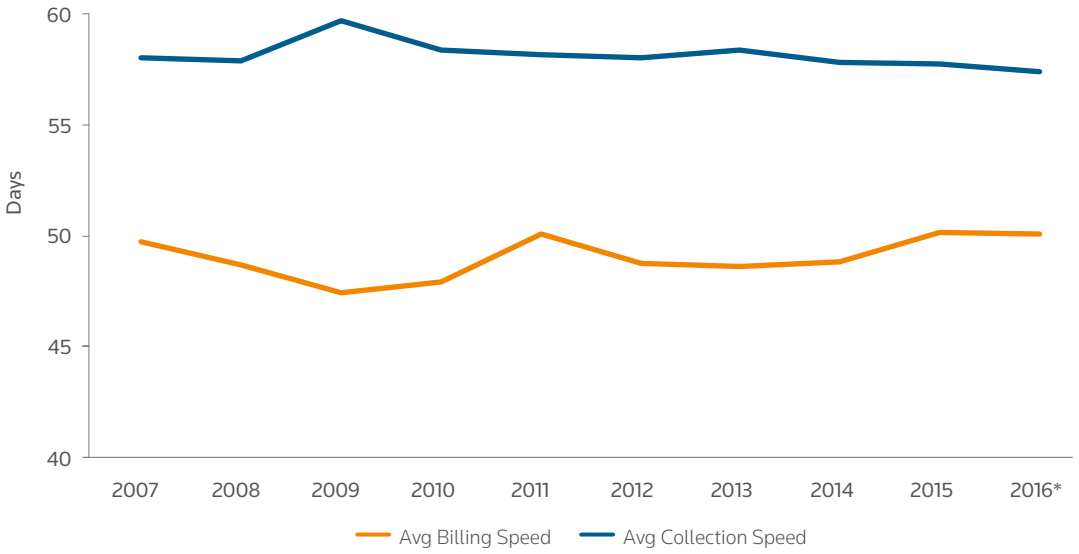


Source: Thomson Reuters Peer Monitor

Lawyers
*Only 11 months (through November)

Chart 10 below shows changes in law firm billing and collection cycles over the past 10 years – i.e., measuring the speed of billings and collections. As shown, while there have been some minor variations, both the billing and collection cycles have remained remarkably flat throughout the period.

Chart 10 – Billing and Collection Cycles

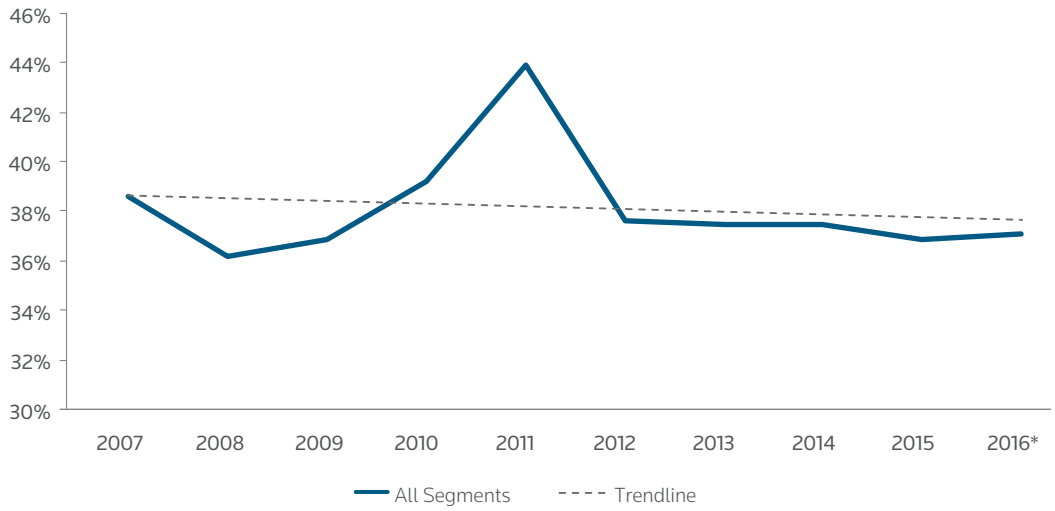


Source: Thomson Reuters Peer Monitor

Billable time type; non-contingent matters
*Only 11 months (through November)

As a result of flat demand, reduced productivity, and client pushback on rate increases as reflected in declining realization, law firm profit margins have been fairly stagnant to declining over the past decade. Although margins did spike upward in 2011 and early 2012, as shown in Chart 11 below, the trend for profit margins has been slightly downward over the entire 10-year period.

Chart 11 – Profit Margin Stagnation



Source: Thomson Reuters Peer Monitor

*Rolling 12 months through Q3 2016 (i.e., Q4 2015-Q3 2016)

From the foregoing analyses, it is apparent that the financial performance of law firms over the past 10 years has essentially been driven by only one factor: rate increases. As we have seen, demand growth for law firm services has been essentially flat, productivity has been declining, expenses have been growing (albeit at a fairly modest rate), and leverage has remained essentially unchanged as have firm billing and collection cycles. In short, the only factor positively impacting revenue growth has been the ability of firms to raise rates 2 to 3 percent a year. While this rate growth has sustained the modest improvements in law firm financial performance that we have seen over the past decade, it is important to note that client pushback to rate increases continues to mount as evidenced by declining realization rates. Accordingly, it is at best an open question whether continued reliance on rate increases alone to drive law firm financial growth will be a sustainable model for the industry in the future.

Review of the Past Decade – Fundamental Market Changes

During the decade since the onset of the Great Recession in 2007, law firms have experienced not only a challenging environment for financial growth (as described above), but also several fundamental changes to the legal market itself. These changes, driven by a broader shift from a seller's to a buyer's market and by increased client demands for greater efficiency, predictability, and cost-effectiveness in the delivery of legal services, have forced firms to deal with new market realities and have called into question some of the assumptions that supported the traditional law firm business model.

Death of Traditional Billable Hour Pricing. One of the most potentially significant, though rarely acknowledged, changes of the past decade has been the effective death of the traditional billable hour pricing model in most law firms. This isn't to suggest that most firms have done away with billing based on hours worked; indeed the majority of matters at most firms are still billed on an "hourly basis." But focus on that fact alone misses a fundamental shift that has occurred in the market.

This change has been overlooked principally because of a definitional problem. In much of the writing on this subject, the focus has been on so-called alternative fee arrangements or "AFAs," pricing strategies that are based on fixed-price or cost-plus models that make no reference to billable hours in the calculation of fees. Since other pricing models typically incorporate some reference to billable hours, it has often been

assumed that only AFAs are genuine non billable hour alternatives and every other approach is simply business as usual. That conclusion, however, overlooks a major shift that has occurred over the past decade: the widespread client insistence on budgets (with caps) for both transactional and litigation matters.

Plainly, the imposition of budget discipline on law firm matters forces firms to a very different pricing model than the traditional approach of simply recording time and passing the associated "costs" through to the client on a billable-hour basis. In fact, from a law firm standpoint, a budget approach is in some respects worse than an AFA, since it imposes a fixed price (in the form of the budget cap) but forces firms to "earn their way up" to the fixed price through recorded billable hours (which may themselves be deeply discounted). Moreover, even if the budget caps imposed by clients are subject to renegotiation on some basis, the existence of the budgets themselves may result in self-imposed restraints on partners to push for adjustments. Firms may choose to regard these budget-driven arrangements as billable-hour-based pricing, but they are substantially different from the traditional model that largely prevailed prior to 2008.

Although today AFAs probably account for only 15 to 20 percent of all law firm revenues, budget-based pricing is much more prevalent. Indeed, in many firms, these two methods combined may well account for 80 or 90 percent of all revenues.

Erosion of the Traditional Law Firm Franchise. Driven by strong internal pressures to reduce the overall cost of legal services, clients over the past decade have been increasingly willing to embrace a broad range of strategies to enhance the value they receive for their "legal spend." A linchpin of these strategies has been a growing willingness on the part of clients to disaggregate or unbundle the services they seek from particular outside providers, and this, in turn, has led to a steady erosion of the traditional law firm franchise.

Prior to 2007, clients would typically entrust an entire transaction, litigation, or other project to one of their outside law firms, and the selected firm would handle all aspects of the matter "from soup to nuts." While this approach was clearly advantageous for law firms, it resulted in higher fees for clients, partly because firms tended to have many of the tasks involved in the matters performed by professionals who were overly qualified for the jobs at hand. A classic example is using relatively high-priced associates to conduct routine document reviews that could adequately be performed by qualified paralegals or other support staff.

As a result, clients over the past 10 years have been increasingly willing to break particular matters into their constituent parts and to decide, with respect to each part, how the services needed could be provided most efficiently and cost-effectively. Sometimes this has resulted in clients moving certain functions in-house, sometimes in outsourcing certain functions to legal process outsourcers or other non-law firm vendors, and sometimes in moving certain functions to other lower-cost law firms. As to overall coordination, clients may choose to retain that responsibility in-house, may expect their primary outside law firm to assume the role, or may ask a third party to step in.

One significant result of this disaggregated approach is that the client's relationship with its outside counsel may – and often does – shift from a traditional client/trusted advisor relationship to more of an *ad hoc*, transactional relationship. In the latter model, the outside lawyer becomes less of a counselor with respect to the overall matter and more of a provider of specialized services that the client is unable to provide internally or acquire more effectively elsewhere.

As a result of this trend, the range of services that were traditionally viewed as the exclusive purview of law firms has begun to shrink as new and sometimes non traditional competitors have aggressively vied for parts of the work historically dominated by law firms. This trend helps to explain why demand growth for law firm services has remained essentially flat since 2010 notwithstanding increases in overall spending for legal services by corporate clients.

In its recent *2016 Chief Legal Officer Survey*, the consulting firm Altman Weil reported that, among the 336 corporate CLOs responding to its survey, 35.2 percent planned to decrease their spend on outside counsel during the coming 12 months, while only 21.8 percent planned to increase their spend. At the same time, 37.2 percent of respondents planned to increase their in-house lawyer workforce, while only 8.5 percent planned a decrease. These same trends have remained fairly consistent since 2010.[13] Additionally, 57 percent

13 Altman Weil, Inc., *2016 Chief Legal Officer Survey: An Altman Weil Flash Survey*, Nov. 2016, at 1-2.

of respondents reported that their companies outsource some work to non-law firm vendors (an increase from 43 percent when the question was last asked in 2012). The average value of work shifted from law firms to non-law firm vendors in the preceding 12 months was reported as $754,644, an increase from the $496,784 reported in 2012.[14]

These same trends were confirmed in a study conducted by Thomson Reuters in early 2016.[15] Among 429 corporate law department respondents, 29 percent reported decreased reliance on outside counsel during 2015, while only 27 percent reported increased reliance.[16] Among the same companies, 24 percent planned to increase their internal law department staffs, while only 2 percent planned to decrease them.[17]

If one considers that the core services that can be provided *only* by law firms are fairly narrow[18] and that the range of potential competitors is fairly broad, it seems quite likely that this trend will continue. If so, law firms (at least in the U.S.) could ultimately face the choice of pulling back their offerings to a set of core services or, in the alternative, finding new ways to compete effectively with non-law firm competitors for a broader range of services.

Declining Effectiveness of the Traditional Leverage Model. In the traditional law firm business model, leverage (defined as the ratio of all lawyers other than equity partners to equity partners) was an important factor in driving firm profitability. Organizationally, law firms were envisioned as pyramids in which a large number of modestly paid lawyers at the bottom supported a much smaller number of well-compensated partners at the top. The system worked because the lawyers at the bottom were billed out at an hourly rate that far exceeded their costs to the firm, thus enabling the fewer lawyers at the top to bill out at rates that were far lower than needed to cover their costs.

As shown in Chart 9 above, over the past 10 years, the leverage ratio for U.S. firms has averaged between 2.0:1 and 2.3:1, although the leverage figures vary widely for individual firms.[19] What is often missed in current discussions of leverage, however, is that the effectiveness of traditional leverage as a driver of law firm profitability has been steadily eroding over the past decade as a result of three converging factors. First, in today's increasingly cost-conscious environment, clients are no longer willing to foot the bill for what they regard as the "learning curve" of young lawyers. As a result, many corporate clients have insisted that they will no longer pay for first- or second-year associates working on their matters on the rationale that they are not sufficiently experienced or competent to make a meaningful contribution. Second, in part reflecting these client attitudes but also in an effort to hold their rising expenses in check during a period of limited demand growth, firms have cut back significantly on their hiring goals for associates. This has resulted in a reduction of overall associate ranks during the period. And third, in an effort to bolster their profits per equity partner, firms have held growth in their equity partner ranks essentially flat for several years. To achieve this objective, many firms have increased their numbers of non-equity partners, sometimes even through processes of "de-equitization."

The results of all of these adjustments are shown in Chart 12 below. As can be seen, over the past decade, within the ranks of non-equity partner lawyers, the number of associates with three or more years of experience has decreased slightly, the number of non-equity partners has risen, the number of first- and second-year associates has dropped significantly, and the numbers of senior and staff counsel and of

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14 *Id.*at ii, 5.

15 Thomson Reuters, *2016 Legal Department In-Sourcing and Efficiency Report: The Keys to a More Effective Legal Department*, Feb. 2016.

16 *Id*. at 9.

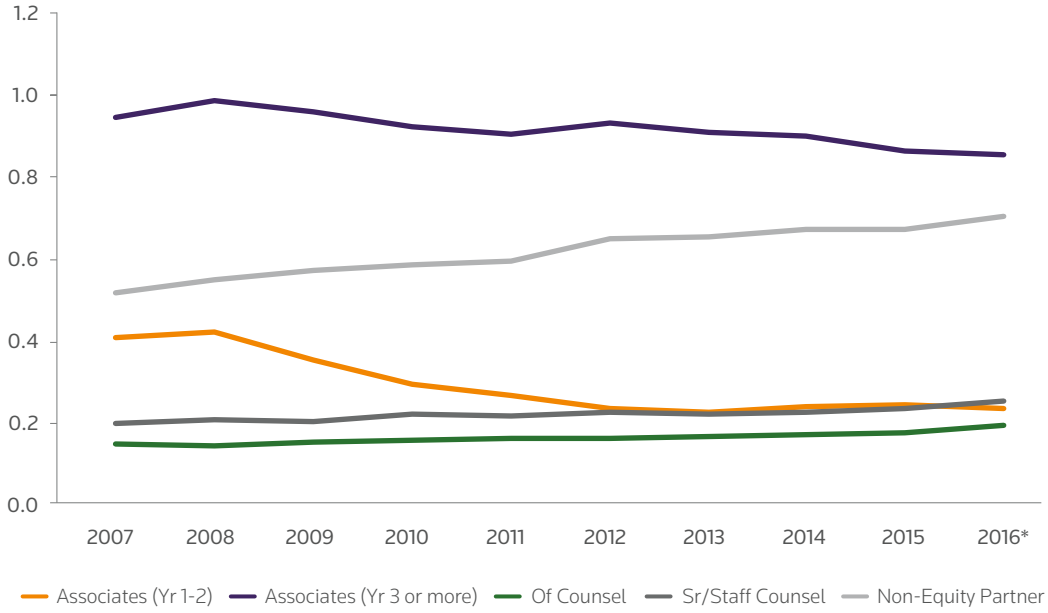
17 *Id*. at 18.

18 In the United States, courts have found it very difficult to define those activities that constitute the exclusive "practice of law." While the list varies somewhat from state to state and while there are certainly gray areas, most commentators would agree that the list of activities that, if undertaken by a non lawyer, would constitute the unauthorized practice of law is fairly short. Clearly, only lawyers can appear in most courts or issue formal legal opinions or (at least in some states) prepare wills or trust instruments or hold themselves out to the public as lawyers. But beyond these activities and perhaps a few others, it is not unlawful for a non lawyer to engage in a full range of activities for which clients have traditionally looked to their lawyers – including negotiating or drafting contracts, drafting legislation, doing legal research, completing legal forms, overseeing transactions or other kinds of deals, discussing settlement of outstanding disputes, etc. Of course, in the United Kingdom and several other countries, this whole issue is moot, as non lawyers are legally permitted to offer legal services.

19 Among the Am Law 100 firms in 2016, leverage ranged from 1.13 (at the lowest) to 8.95 (at the highest). See "The Am Law 100 at a Glance," *The American Lawyer*, May 2016, at 72-81. Although reliable data are not readily available, anecdotal evidence also suggests it's not uncommon to find midsize law firms with leverage less than 1:1.

counsel have remained fairly stable. What this means for law firm bottom lines is that the cost of leverage has gone up substantially, with the ranks of lower compensated lawyers declining at the same time that the number of higher compensated lawyers has increased. This, in turn, has eroded the effectiveness of the traditional leverage model in driving positive financial results.

Chart 12 – Composition of Leverage by Lawyer Categories (FTE)



Source: Thomson Reuters Peer Monitor

Lawyers
* 2016 is through November 2016

Growing Segmentation within the Market for Law Firm Services. Over the past decade, as competition has increased in the market for law firm services, there has been a discernible and growing segmentation of the market into highly successful and less successful firms, and the performance gaps between those categories have been widening. This trend was reflected in the creation by *The American Lawyer* of a new classification within the Am Law 100 in 2014 – the "Super Rich," a group of some 20 firms that clearly outperformed all others across all key financial metrics.[20] But the growing market segmentation that has become apparent over the past 10 years is not limited to those highly successful firms at the very top of the market. It also includes other firms across the market that have managed to outperform their peers on a consistent basis and appear to be achieving better financial results, notwithstanding the overall tepid market conditions that we have previously described.

There are, of course, many reasons that some law firms outperform others – including historic location, practices, and client base – but there are two characteristics that seem to have emerged over the past several years as particularly important in marking firms as likely winners: strategic focus and proactive response to the needs and expectations of clients. As to the first (strategic focus), market trends over the past 10 years tend to support the conclusion that those firms with a clearly defined view of their core practices and client base fare better in the market than firms whose message and brand are ambiguous and who are largely undifferentiated from other firms of their size.

Over the past decade, many firms have responded to the increasingly challenging market environment by opting simply to grow bigger, in many cases without considering other – and perhaps better – strategic options. In the years since the Great Recession, lateral partner moves at big law firms have increased

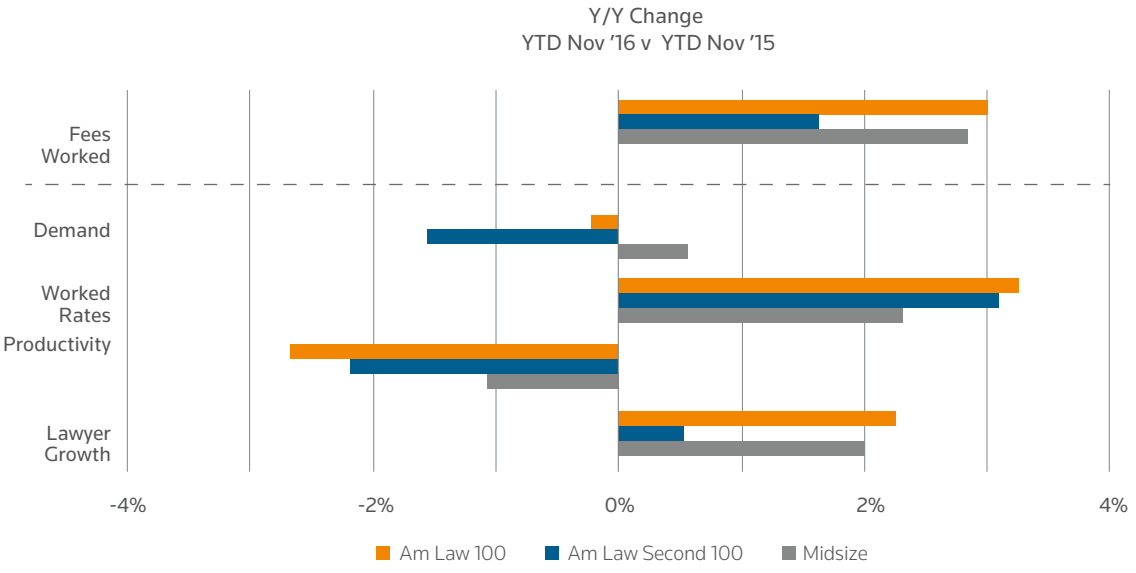
20 The "Super Rich" category consisted of a group of elite firms, all with average revenues per lawyer of at least $1 million and profits per partner of at least $2 million. The category originally included 20 firms, but that number expanded in 2015 to 28. Chris Johnson, "Signs of a Slowdown," *The American Lawyer*, May 2016, at 47.

significantly. Indeed, 2015 was the strongest year for lateral partner moves since 2009.[21] Law firm mergers have also hit near-record levels, with 2016 closing out just short of another record-breaking year.[22]

While a decision to grow larger (through either merger or lateral acquisitions) can reflect a rational tactic if combined with a clear strategy, in previous annual reports, we have pointed out the dangers of viewing growth in and of itself as a viable strategy.[23] Unless driven by a clear strategic vision, simply getting bigger can exacerbate a firm's problems rather than solve them by making the firm's focus even more ambiguous and its position in the market even less differentiated.

To some extent this may be precisely what is happening to many Am Law Second 100 firms in today's market. As shown in Chart 13 below, if one compares financial performance of firms by market segment over the past year, Am Law 100 firms have led in such key performance metrics as fees worked and worked rates,[24] even while recording the lowest ranking for productivity; while midsize firms have led in demand growth, have the best productivity ranking (albeit still negative), and have placed second to Am Law 100 firms in fees worked. All this has left Am Law Second 100 firms with the weakest performance in terms of demand and fees worked, as well as the second weakest performance in productivity.

Chart 13 – Key Performance Measures by Segment



Source: Thomson Reuters Peer Monitor

All timekeepers
Billable time type; non-contingent matters

These performance results over the past year are consistent with similar trends that have been visible over the past three years. A comparison of the financial performance of Am Law 100, Am Law Second 100, and midsize firms through the first 11 months of the past three years (to keep the comparison periods consistent) shows that Am Law Second 100 firms experienced consistent downward trends in demand growth, fees worked, and lawyer growth, as well as a decline in productivity from the beginning to the end of the period. By contrast, midsize firms saw a consistent upward trend in demand growth and fees worked, as well as an improvement in productivity from the beginning to the end of the period. For Am Law 100 firms, the performance was more mixed, though better than Am Law Second 100 firms in most indicators.[25]

21 MP McQueen, "The Big Law Lateral Hiring Frenzy Continues," *The American Lawyer* (online edition), Feb. 1, 2016.

22 Nell Gluckman, "Could 2016 Break Law Firm Merger Record?" *The American Lawyer* (online edition), Dec. 2, 2016.

23 *See* Georgetown Law Center for the Study of the Legal Profession and Peer Monitor, 2014 Report on the State of the Legal Market, at 1-2, 9-11.

24 Worked rates are those rates that a firm agrees to use on a given matter, typically after negotiations with its client. Fees worked reflect worked rates multiplied by the number of billable hours actually worked.

25 Thomson Reuters Peer Monitor Analysis.

One possible interpretation of these results is that clients, while still directing some types of work to high-end, fairly specialized, premium firms (the Am Law 50), are increasingly willing to move substantially down market to smaller firms (midsize firms) in order to achieve significant price savings. If the large firms in the middle (the Am Law Second 100 and some of the Am Law 51-100) cannot offer sufficient differentiation for their services, clients will have little incentive to change this behavior.

As to the second characteristic impacting market segmentation (proactive firm response to the needs and expectations of clients), in our last year's annual report, we offered some of the growing evidence suggesting that firms that adopt a proactive attitude toward meeting their clients' demands and expectations for better efficiency, predictability, and cost-effectiveness in the delivery of legal services tend to have better financial results than firms that do not.[26] Evidence to support this proposition has continued to mount during 2016.

In its *2016 Law Firms in Transition* survey, Altman Weil asked the leaders of 356 U.S. law firms about their practices concerning alternative fee arrangements. Among the 97 percent of firms that bill at least some of their work on a non-hourly basis, 72 percent of respondents indicated that their firms take a reactive approach, addressing AFAs only in response to client requests. Only 28 percent said that their firms were proactive in initiating conversations about AFAs. The key finding, however, was the difference in financial results for firms taking a proactive rather than reactive approach.[27]

When asked to compare the profitability of non-hourly based and hourly based work, 84 percent of the proactive firms reported their non-hourly based matters were at least as profitable as their hourly based work. This was true for only 51 percent of the reactive firms. Moreover, 40 percent of the proactive firms indicated their non-hourly matters were *more* profitable than their hourly projects, as compared to only 10 percent of the reactive firms.[28]

Altman Weil summarized these responses in one of the key findings identified in its survey:

> **Proactivity as a competitive advantage:** We see a seven-year trend of compelling success enjoyed by firms that take a proactive approach to alternative fee arrangements. We think this is a good indicator that proactive change in other areas could be equally effective in accelerating law firm performance relative to competitors.[29]

Long-Term Challenges

Given the significant economic changes and the fundamental shifts in the market environment for law firm services over the past decade as described above, it is important for all law firms to think carefully about the long-term challenges raised by these developments. For the past five or six years (as the market regained some momentum from the Great Recession), it was possible for most firms to maintain their growth and productivity at acceptable levels by implementing a number of relatively "easy fixes." In 2009, for example, firms engaged in a massive layoff of both legal and non-legal staff, in a largely successful gambit to protect short-term profitability. Many firms also initiated efforts to stem the growth of their equity partner ranks, both by de-equitizing some former equity partners and slowing advancement of others into equity status. Almost all firms adopted an aggressive approach to managing their expenses, both direct expenses and overhead. Most firms reduced their associate hiring goals and began more expansive use of contract lawyers to fill peak need requirements without incurring the long-term burden of permanent employees. Some firms experimented with cost reduction strategies like opening firm-wide service centers in lower cost locations. And all firms continued to implement regular rate increases, even though declining realization rates somewhat limited their effectiveness.

While all of the above-described actions helped sustain firm financial performance over the past few years, it is not likely they will continue to be as effective in the future. Further reductions in the ranks of equity partners will, for example, be quite difficult as the growth rate for that category is already near zero, and

26 *See* Georgetown Law Center for the Study of the Legal Profession and Peer Monitor, 2016 Report on the State of the Legal Market, at 11-13.
27 Altman Weil, Inc., *2016 Law Firms in Transition: An Altman Weil Flash Survey*, May 2016, at v.
28 *Id*.
29 *Id*. at i.

many firms will need to advance more promising younger lawyers into equity positions soon or risk losing them to competitors. Likewise, with expense growth already at the 2-3 percent level, it will be hard for firms to get much more benefit out of aggressive expense management. Indeed, many firms are now finding that pressure is mounting to ratchet up spending for strategic investments in technology, compensation increases for associates (as evidenced by the recent round of raises), and other purposes. Productivity, of course, continues to be a challenge across the market and it is possible that firms could implement further layoffs in some categories, but such actions would undoubtedly have serious morale implications. And, while continuing to raise rates is both a possible and likely tactic, such increases (as noted above) will have diminishing positive effects, particularly as clients continue to push back against every such increase.

What all of this suggests is the need for a longer-term strategic focus in the way that law firms think about their markets, their clients, their services, and their futures. While there are no doubt a number of issues and assumptions that should be addressed in this process, we have set out four below that we think are particularly important.

Need for a New Focus on Profitability. We previously described the effective death of the traditional billable hour pricing model over the past 10 years. Most firms have adapted to that development by adjusting their accounting systems to accommodate client demands for budgets, caps, collars, discounts, and the like. And, in support of these efforts, most firms have developed internal data to allow them to calculate the actual cost of services provided.[30] All of which is to say that most large firms now make some calculation of profitability in dealing with pricing and billing issues.

The problem is that, notwithstanding the growing use of profitability analysis for pricing and billing purposes, the traditional billable hour metric continues to dominate other firm processes – not the least of which are evaluation and compensation processes – and remains fixated in the way most lawyers think about their firms' economics. This, in turn, creates a serious mismatch between the way financial performance should be judged and the standards used by lawyers to shape their own behaviors.

To give a simple example, even if a firm determines the appropriate pricing for a given matter using sensitivity analysis to maximize profitability, the chances are (at least in most firms) that the performance of the partner in charge of the matter will, at the end of the year, be evaluated primarily on the basis of the number of billable hours recorded in respect of the matter. From a mathematical standpoint, this is of course ridiculous since the most profitable approach to the matter from the firm's standpoint could well be one that entails fewer and not more billable hours (a reality that many law firm partners would no doubt find baffling).

To cite another example, in many firms today, associate (and sometimes partner) bonuses are still awarded principally on the basis of the number of billable hours recorded during the year. Again, the myopic focus on billable hours as the only significant benchmark of performance not only sends the wrong signals to lawyers about what's really important, it serves as a disincentive to provide services to clients in ways that may be more efficient and less costly while still delivering superior returns to the firm.

To remain competitive in the rapidly changing market for legal services, firms must bring all of their systems and processes (including pricing, evaluation, compensation, resource allocation, and others) into alignment around consistent principles of profitability. Continued reliance on the traditional billable hour approach for all (or even some) of these purposes no longer makes economic, competitive, or practical sense.

Need for a More Expansive Leverage Model. We have previously noted the erosion of the traditional leverage model as a factor in law firm profitability, driven in large part by a reduction in the percentage of associates comprising the legal staffs of most firms. Given the fundamental shifts in the market that have occurred during the past decade, it seems quite unlikely that firms will be ratcheting up their associate hiring goals anytime soon. This does not mean, however, that leverage should no longer be a relevant consideration in law firm strategy. Rather, it suggests the need for a more expansive view of what constitutes leverage in the law firm context.

Historically, law firms have thought of the delivery of legal services as an activity that only lawyers can provide – and, for that matter, only lawyers employed by law firms in traditional roles. This attitude has

30 *Id*. at 66. Altman Weil found that some 67.2 percent of respondents to its 2016 survey indicated their firms have developed such data, a figure that goes up to 90.6 percent in firms of 250 lawyers or more.

made many firms skeptical about re-thinking their legal service delivery models even as their clients have demanded more efficient and cost-effective approaches. To be sure, many firms have increased their use of contract lawyers and added new categories of staff lawyers or counsel in an effort to reduce costs (and thus improve leverage), and these steps have undoubtedly been helpful. What is ultimately needed, however, is a broader reimagining of the overall model for legal service delivery, one that includes paraprofessionals, technologists, information specialists, process managers, and others – in addition to lawyers – as part of an integrated system for the delivery of legal services. This is the model that has evolved in medicine, also driven by the dual objectives of improving outcomes and quality of service while reducing costs. Such a redesigned approach to legal services – combined with a pricing model based on outcomes (results) rather than inputs (recorded time) – could significantly improve both the competitiveness and profitability of those law firms willing to take these issues seriously.

Need for a Clear Focus on Core Practices. As previously described, one of the fundamental market changes that has occurred over the past 10 years has been the erosion of the traditional law firm franchise. Clients have increasingly been looking either internally or to other providers for many of the services that they historically relied on their outside law firms to provide. While this trend started with high-volume, process-oriented work like document review and e-discovery projects, it is now expanding to other activities including contract supervision and management, document drafting and assembly, legal and non legal research, managed legal services, temporary lawyer staffing, managed dispute resolution, and many others. Given the expanding number of competitors in the space and the growing sophistication of technological tools to enhance service offerings, it seems almost certain that the scope of traditional law firm services being offered by alternative providers will continue to expand.

With these developments in mind, it is more important than ever before for every law firm to focus on its core practices and to ensure that it is delivering the highest possible value to its clients in those areas that are critical to the firm's success. This means identifying those aspects of each practice that truly only lawyers can perform – or that are at least best performed by lawyers – and making certain that systems and processes are in place to ensure the effective delivery of those services. It also means making strategic choices since not every practice that a firm has will be a genuinely "core" practice.

As previously noted, the law firms that appear most at risk in the present competitive environment are those whose message and brand are ambiguous and who are largely undifferentiated from other firms of their size. In a market where firms face mounting pressures from both traditional and non traditional competitors, strategic focus and differentiation are critical to survival.

Opportunity for a New Focus on Supply Chain Management. In response to the growing influx of non-traditional competitors in service areas historically dominated by lawyers, many law firms – in addition to focusing on their core practices – have chosen to expand their service offerings into other related areas that complement the firms' existing legal expertise but are beyond the scope of traditional law firm services. While these ventures currently constitute a very small part of the legal market, there has been a noticeable increase in the number of firms willing to experiment with such approaches.[31]

One particularly intriguing opportunity for such expanded services responds to the growing client willingness to disaggregate work among many providers by reimagining a new role of the law firm as the overall coordinator for all of the services being provided to the client. In this supply chain management role,[32] the law firm would offer not only the core services that only lawyers can provide but also the overall supervisory function that would ensure that all of the work of various vendors providing services to the client is consistent with the needs of the project, delivered in an efficient and cost-effective way, and acceptable against agreed-upon standards of quality.

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31 See Chris Johnson, "Outside the Box: Firms Go Beyond the Law with New Ventures," *The American Lawyer* (online edition), Apr. 7, 2016; Chris Johnson, "Lawyers on Demand Ramps Up Growth," *The American Lawyer* (online edition), May 17, 2016; Nell Gluckman, "Paul Hastings Latest Big Firm to Dabble in Data Analytics," *The American Lawyer* (online edition), Oct. 20, 2016. For a particularly interesting example of one firm's effort to move beyond the traditional legal services model, see http://www.eversheds.com/global/en/what/services/consulting/managed-services.page, describing Eversheds's new offering of managed legal services through its consulting operations.

32 For a comprehensive discussion of the possible role for law firms as managers of supply chains, see Milton C. Regan and Palmer T. Hennan, "Supply Chains and Porous Boundaries: The Disaggregation of Legal Services," 78 *Fordham L. Rev.* 2137 (2009-2010).

For law firms, this expansion of services represents a logical extension of the activities that clients retain law firms to provide – *viz.*, a reliable assurance that the overall work product that is delivered will conform to the highest standards of quality and ethical norms. To fulfill this expanded supervisory function, however, law firms will have to develop in-house capabilities to monitor and coordinate activities across a project and to provide strategic guidance to the client at key inflection points. This means that firms would need to recruit project management and oversight specialists who could provide the supervisory skills necessary to assure success.

To the extent that firms chose to embrace this expanded role, they would need to consider carefully the implications for internal staffing – including the possibility of empowering non lawyer professionals to engage in client matters in a significant way. Admittedly, this proposal that law firms consider expanding their service offerings to include overall project supervision may be a bridge too far for many firms. But it represents one interesting approach to ensuring that law firms remain central players in the radically changed market for law firm services.

Conclusion

The past 10 years have been a period of dramatic change in the market for law firm services. The decade began with the market in a state of near collapse following the onset of the Great Recession at the end of 2007. By 2010, however, the demand for law firm services bounced back to some extent and, since then, has (despite occasional peaks and valleys) remained essentially flat to slightly positive. Although many law firms have been able to maintain some positive growth in both revenues and profits since 2010, that growth has been driven almost entirely by increased rates. With demand growth flat, declining productivity, growth in expenses (albeit at a fairly modest rate), and increasing cost of leverage (as firms have changed the mix of their legal staffs), the *only* factor that has positively impacted revenue growth has been the ability to raise rates 2 to 3 percent a year. And even that strategy has encountered significant client resistance, as evidenced by steadily declining realization rates. As a result, the overall trend of profit margins across the market has been slightly downward over the entire 10-year period.

These financial results have reflected some fundamental shifts in the market that cannot be ignored:

- The emergence of a buyer's market in which clients demand greater value for the dollars they spend for legal services and in which value is measured by efficiency, predictability, and cost-effectiveness in the delivery of services;
- The demise of the traditional billable hour pricing model as clients have increasingly insisted on other approaches to the pricing of legal services;
- The erosion of the traditional law firm franchise as clients have been ever more willing to disaggregate work and to allocate responsibilities for different aspects of a single matter to different law firms, in-house lawyers, or non-traditional vendors; and
- The growing segmentation of the market as clients have moved certain work "down market" and have been prepared to reward those firms responding proactively to their demands while punishing those firms that did not.

All of these changes and others have defined a market that is fundamentally different from the one that law firms confronted in 2007. Those firms that are able to adjust to the new market realities, not by putting band-aids on the old models, but rather by engaging in a thoughtful review and (where necessary) redesign of their approaches to client service, pricing, legal work processes, talent management, and overall structure will enjoy an enormous competitive advantage. Those that do not will face an increasingly uncertain future.

To return to the Darwinian analogy, it is fitting to remember that those firms that are most likely to survive and prosper in the new market environment are not necessarily the oldest or the strongest or the smartest, but rather those most able to adapt to the changes around them.

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2018, I caused a true copy of the foregoing volume of the joint appendix to be delivered electronically via the Court's CM/ECF system to counsel for defendants-appellees, Loren AliKhan, Stacy L. Anderson, and Lucy Pittman, and counsel for *amici* for appellants, Michael Kirkpatrick.

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