UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

M.B., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:17-cv-04102-NKL
	)	
Jennifer Tidball, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY SUGGESTIONS IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES AND EXPENSES

I. INTRODUCTION

Defendants do not dispute that Plaintiffs prevailed in this case or that Plaintiffs have attained excellent results for the Plaintiff Class through a Settlement Agreement, ensuring robust oversight of the administration of powerful psychotropic medications to Missouri foster children. Defendants also do not dispute: Plaintiffs' litigation of this case required expertise in multiple specialized areas, including child welfare systems reform and the administration of psychotropic medications for children in government custody; Plaintiffs' counsel is particularly experienced in these areas; and the case was complex and consequential for the children in Defendants' custody. Defendants have not submitted any evidence to dispute Plaintiffs' well-supported showing.

Instead, Defendants make conclusory arguments that Plaintiffs' fees and expenses – which Plaintiffs' counsel have already reduced by more than 22% – should be reduced by a further 66%, without presenting any real analysis of Plaintiffs' request or time sheets. Defendants' unsupported assertions should be rejected. Plaintiffs' requested hourly rates fall well within the prevailing rates in the Missouri legal community and appropriately recognize Plaintiffs' counsel's considerable expertise and the excellent outcome of this case. Plaintiffs' motion for reasonable attorneys' fees and expenses should be granted.

II. PLAINTIFFS' CLAIMED RATES ARE WELL WITHIN THE RANGE OF REASONABLE RATES IN MISSOURI.

A. Defendants have not rebutted Plaintiffs' evidence of prevailing rates in the community.

Plaintiffs seek an award of fees based on reasonable rates within Missouri, which Defendants agree is the relevant legal market. Opp. at 5. Plaintiffs have submitted substantial evidence demonstrating prevailing rates in the local community and establishing that Plaintiffs' claimed rates are reasonable.[1] Defendants have not offered evidence to rebut this showing.

Plaintiffs submitted multiple declarations from Missouri attorneys who attested that the rates that Plaintiffs seek are "reasonable" and "within the market rates charged by similarly

[1] With these reply suggestions, Plaintiffs submit a supplemental declaration from Sterling Analytics correcting a minor typographical error in one rate listed in their original declaration. Sterling Supp. Decl. ¶¶ 1, 2.

experienced attorneys in Missouri." Kennedy Decl. ¶ 15; *see also* Ammann Decl. ¶ 15; Kilroy Decl. ¶¶ 10-11 (noting the "standard hourly rate for lawyers and paralegals" at his former firm "of similar years and experience is higher than the rates sought by plaintiffs"). Defendants have not provided declarations from local attorneys disagreeing with these sworn statements or suggesting other counsel who would have been capable of handling this complex litigation.

Plaintiffs also submitted evidence of the Missouri Lawyers Weekly's ("MLW") 2018 Billing Rates Survey, which was the latest annual survey available at the time that Plaintiffs filed their opening brief. Defendants agree that courts may properly consider evidence from the MLW's annual survey to help determine the range of reasonable rates in the Missouri legal community. Opp. at 5. After Plaintiffs' opening brief was filed, the MLW released its 2019 Billing Rates Survey, which provides further support that Plaintiffs' requested fees are well within Missouri's prevailing market rates. Ammann Supp. Decl. ¶ 2, Ex. A. For local attorneys at one firm, Shook, Hardy & Bacon, whose practice area was identified as "public interest class action," an attorney with about forty years of experience billed $770 per hour, an attorney with twenty-five years of experience billed $680 per hour, attorneys with nine years of experience billed $465 per hour, an attorney with four years of experience billed $375 per hour, and an attorney with three years of experience billed $320 per hour. *Id.* at BR6; Welch Supp. Decl. ¶ 12. Plaintiffs have requested substantially lower rates for attorneys with comparable experience. For example, Plaintiffs seek a rate of $500 for Mr. Grimm, who had more than forty years of experience. This rate is 35% lower than the comparable rate at Shook, Hardy and Bacon.

B. Plaintiffs should be awarded current 2019 rates, not 2017 rates.

Defendants argue that Plaintiffs' rates should be calculated based on the prevailing rates in Missouri in 2017 rather than current 2019 rates, because "the pre-filing investigation occurred in the year prior to June 2017" and "the largest portion of the actual litigation in this case was performed in 2017." Opp. at 6. Defendants' contention is wrong as a matter of law and fact.

First, as explained by the Supreme Court, when determining reasonable attorneys' fees under 42 U.S.C. § 1988, it is appropriate to calculate awards based on current rather than historic

hourly rates. "'When plaintiffs' entitlement to attorney's fees depends on success, their lawyers are not paid until a favorable decision finally eventuates, which may be years later . . . . Meanwhile, their expenses of doing business continue and must be met.'" *Missouri v. Jenkins*, 491 U.S. 274, 282 (1989) (citation omitted) (alteration in original). "Clearly, compensation received several years after the services were rendered – as it frequently is in complex civil rights litigation – is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings." *Id.* at 283. Therefore, it is appropriate under § 1988 to make an adjustment for delay in payment, including by basing the award on current rates. *Id.* at 282-84.

Second, contrary to Defendants' representation, a significant amount of work in the litigation took place after 2017, as reflected in Plaintiffs' billing records, including: briefing the class certification motion and related proceedings; conducting substantial discovery, including document production and review; taking and defending numerous depositions; working with experts; and engaging in settlement negotiations. That considerable work is reflected in Plaintiffs' time records: Plaintiffs seek compensation for 3,116.0 hours of work in 2016 and 2017, and 8,301.6 hours of work in 2018 and 2019. Welch Supp. Decl. ¶ 8.[2]

C. Plaintiffs' rates should not be "capped at the . . . average" in the Billing Rates Survey.

Defendants assert that Plaintiffs' rates should be "capped at the 2017 average hourly rate for Missouri attorneys," but offer no explanation why an *average* statewide rate is a reasonable measure for the *maximum* rate Plaintiffs can obtain for their most experienced attorneys, or why the rates for Plaintiffs' other attorneys should be significantly less than the state average.[3] Opp. at 6. In fact, the average rate that Plaintiffs seek for their attorneys' time is less than the average rate of $382 per hour that Defendants put forward for Missouri attorneys. Welch Supp. Decl.

[2] Plaintiffs waived time for their pre-filing investigation prior to June 13, 2016, one year before filing the complaint.

[3] Defendants seem to take issue with Plaintiffs' use of median rates in the 2018 Billing Rates Survey, but do not explain their concern with the median. Between the 2017 and 2018 editions of the MLW survey, the publication switched from reporting the average or mean to reporting the median. Ammann Supp. Decl. ¶ 2, Ex. B at BR2.

¶ 13. Further, the rates that Plaintiffs seek are well under the rates that many attorneys charge within the state of Missouri as shown in the Billing Rates Surveys and Mr. Kilroy's declaration.

Defendants essentially argue that Plaintiffs' rates must be in the lower half of the rates statewide. That is not the legal standard, and the cases cited by Defendants do not support that conclusion. A "reasonable hourly rate is the prevailing market rate, that is, 'the ordinary rate for similar work in the community where the case has been litigated.'" *Moysis v. DTG Datanet*, 278 F.3d 819, 828 (8th Cir. 2002) (citation omitted). Courts rely on the MLW surveys as relevant evidence of the ordinary rates charged in the state. But those surveys are not the only evidence of local rates, and there is no requirement that rates must be awarded at or below the averages in those surveys.[4] To the contrary, courts, including this one, regularly award rates above the average rates. *See Stallsworth v. Staff Mgmt. | SMX SMX, LLC*, No. 2:17-CV-04178-NKL, 2018 WL 2125952, at *4 (W.D. Mo. May 8, 2018) (observing the "Kansas City-area average for all attorneys, [was] $373, and for partners, [was] $406," and "the median rate for all consumer attorneys in Missouri [was] $400," and "find[ing] that $450 per hour is a reasonable rate").[5]

Further, as this Court has observed, "the prevailing market rate is only a starting point. The rate charged should also take into account the experience, skill, and expertise of the attorneys as well as the complexity, significance, and undesirability of the case." *Id.* at *3; *see also Hendrickson v. Branstad*, 934 F.2d 158, 164 (8th Cir. 1991) ("In determining whether a fee is reasonable, 'the special skill and experience of counsel should be reflected in the reasonableness of the hourly rates.'") (citation omitted). Defendants have not disputed that this

[4] *See, e.g.*, *Snider v. Peters*, 928 F. Supp. 2d 1113, 1117 (E.D. Mo. 2013) (citing the MLW's 2012 Billing Rates Survey as well as attorney affidavits in support of the reasonable rates, without discussion of the average rates in Missouri); *Buzzanga v. Life Ins. Co. of N. Am.*, No. 4:09-CV-1353 CEJ, 2013 WL 784632, at *1 (E.D. Mo. Mar. 1, 2013) (same); *St. Louis Effort for AIDS v. Lindley-Myers*, No. 13-4246-CV-C-ODS, 2018 WL 1528726, at *3 (W.D. Mo. Mar. 28, 2018) (considering the Billing Rates Survey, along with attorney declarations and the court's own knowledge of the prevailing market rates, to determine the appropriate rates in mid-Missouri, without imposing a cap at the average in the survey).

[5] Although in 2012, one court chose to limit hourly rates in a particular case to the average Missouri billing rate in light of the then "strained national economic conditions" due to the Great Recession, *Comas v. Schaefer*, No. 10-4085-CV-C-MJW, 2012 WL 5354589, at *5 (W.D. Mo. Oct. 29, 2012), other courts have not followed suit.

case was complex and involved specialized areas of law and medicine, established new legal theories, and was highly consequential to the health and safety of children. Defendants also do not dispute Plaintiffs' counsel's considerable expertise in these specialized areas.[6]

Plaintiffs are seeking rates that are well within the prevailing market rates for the local community, and the Court should award them without reduction.

III. PLAINTIFFS' BILLED TIME IS REASONABLE.

Defendants fail to rebut the accuracy and reasonableness of Plaintiffs' hours, instead making broad assertions without any support that Plaintiffs' counsel should not be compensated for the time they spent successfully prosecuting this case. Although a "fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked," "[t]he party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits." *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992) (citations omitted); *see also Stallsworth*, 2018 WL 2125952 at *4 ("There is a strong presumption that the lodestar calculation represents a reasonable fee award.") (citing *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992)). Defendants have not met their burden.

A. Plaintiffs' counsel have exercised rigorous billing judgment.

Contrary to Defendants' characterization, Plaintiffs' counsel have exercised billing judgment rigorously and have chosen to waive a significant amount of fees for which they are not seeking recovery. As described in Plaintiffs' opening brief, Plaintiffs are not seeking compensation for a full year of investigation time and nearly six months of time post-execution of the Settlement Agreement. Plaintiffs' counsel have also waived compensation for significant

[6] A rule such as the one Defendants propose, which effectively limits attorneys protecting important civil rights to rates below those that can be obtained in the private market, would undermine Congress's intent of promoting private enforcement of the civil rights laws. *Casey v. City of Cabool, Mo.*, 12 F.3d 799, 805 (8th Cir. 1993). "A refusal to pay for experience and expertise" when awarding attorneys' fees in civil rights cases "will exact a cost in the form of inexperience and, perhaps, incompetence." *Id.*

categories of expenses and reduced their rates when traveling by 50%. *After* making many reductions, Plaintiffs worked at their own expense with an external auditor, Sterling Analytics, to further reduce their fee and expense claim by more than 22%. Sussman Decl. ¶ 7.

Far from seeking a "windfall," as asserted by Defendants, Plaintiffs' counsel pursued this risky and important litigation solely to protect the constitutional rights of vulnerable children in foster care, and in the hopes of achieving the kind of groundbreaking and comprehensive relief they have achieved. For years, the organizations representing the Plaintiff Class have devoted substantial time and incurred significant expenses pursuing this case. Those firms rely on compensation through awards of reasonable attorneys' fees after successful litigation to allow them to do this important work. Creating this system of private enforcement of the civil rights laws is precisely why Congress enacted § 1988: "If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must recover what it costs them to vindicate these rights in court." *Hensley v. Eckerhart*, 461 U.S. 424, 445 (1983) (internal quotation marks and citation omitted).[7]

B. Plaintiffs' counsel efficiently staffed this case for a successful outcome.

Defendants' conclusory charge that Plaintiffs overstaffed this case should be rejected. Defendants have identified no particular area in which they contend that Plaintiffs' counsel's work was inefficient or redundant. Instead, they simply assert that the "sheer number of lawyers billing on this matter reflects significant overstaffing, inefficiency, and redundancy of effort."[8]

[7] It is not true, as Defendants suggest, that the award requested here would be an anomalous bonanza to Plaintiffs' counsel. Not only is Defendants' contention irrelevant to the lodestar determination, but Defendants fail to recognize that Children's Rights and the National Center for Youth Law have been awarded similar fees in other litigation and that both organizations often have years where little to no fees are paid because counsel is actively engaged on cases such as this one. Bartosz Supp. Decl. ¶ 10; Welch Supp. Decl. ¶¶ 9-10. The latter fact underscores the financial risk Plaintiffs' counsel undertakes when protecting children's rights through litigation.

[8] During a case like this one, Plaintiffs' counsel do not know if they will be compensated for the time that they have devoted to the case. Thus, there is a powerful disincentive to unnecessary expense, including through overstaffing or inefficiency. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning."); *Tussey v. ABB, Inc.*, Case No. 06-CV-04305-NKL, 2019 WL 3859763, at *5 (W.D. Mo. Aug. 16, 2019) ("Class Counsel brought this case without guarantee of reimbursement or recovery, so they had a strong incentive to keep costs to a reasonable level, and they did so.").

Opp. at 7. However, the use of multiple attorneys in non-routine litigation is a well-accepted practice, as courts have recognized. *See, e.g.*, *Johnson v. Univ. Coll. of the Univ. of Ala. in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) ("The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work."). This case involved a substantial amount of work, including among other things: significant written discovery and depositions, including reviewing and/or indexing 1.5 million pages of documents produced by Defendants and third parties, some multiple times due to Defendants' deficient productions; extensive legal research and motion practice, including related to Defendants' appeal of the Court's class certification order and Defendants' unsuccessful attempt to compel production of the therapy notes of one of the Named Plaintiffs; and extensive work with consulting and testifying experts.[9] Bartosz Decl. ¶¶ 30-38.

To do this volume of work effectively, competently, and ultimately successfully, Plaintiffs' counsel had to divide it among a number of attorneys.[10] Bartosz Supp. Decl. ¶ 2;

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[9] The successful litigation of this case also required a substantial investment of time in developing and maintaining relationships with stakeholders, including next friends, potential witnesses, and others. Bartosz Supp. Decl. ¶ 7. Skilled interviewing and building trust about sensitive topics such as those in this case requires the development of rapport and trust, which takes time and repeated interactions, including in-person meetings and phone calls. *Id.*

Defendants' challenge to one of Plaintiffs' counsel's time devoted to this work should be rejected. Opp. at 9-10. Attorneys regularly bill for speaking with potential plaintiffs and witnesses, who might have relevant factual information and may provide important testimony. Courts agree that such time is compensable. *See, e.g.*, *Perkins v. Cross*, 728 F.2d 1099, 1100 (8th Cir. 1984) (investigation time compensable); *Kelly v. Wengler*, 7 F. Supp. 3d 1069, 1078 (D. Idaho 2014) (time spent interviewing potential witnesses compensable, even if those individuals did not ultimately testify). In addition, Defendants' attempt to eliminate all of this attorney's billed time based on purported vagueness is without basis. *See, e.g.*, *Parker v. Town of Swansea*, 310 F. Supp. 2d 376, 392 (D. Mass. 2004) (holding that entries including "references to telephone calls with the plaintiff" "give sufficient detail" to be compensable); *see also People ex rel. Vacco v. Rac Holding, Inc.*, 135 F. Supp. 2d 359, 364 (N.D.N.Y. 2001) ("a complete disallowance of attorneys' fees" is not "the appropriate" remedy for "vague or incomplete billing records"). Plaintiffs need not disclose privileged information in their billing records, including identities of people with whom they spoke confidentially and who were afraid of possible retaliation. *See Gates v. Gomez*, 60 F.3d 525, 535 (9th Cir. 1995) (approving time records that "did not reveal the names of inmates with whom they communicated to protect the confidentiality of their communications and because their clients fear retaliation, and . . . did not always reveal the issue discussed to preserve attorney-client and attorney work product privileges").

[10] As is evident from the attorney time sheets, there were not twenty attorneys simultaneously working on this case, contrary to Defendants' repeated assertions. One attorney, Stephanie Schuster, only worked on the State's interlocutory appeal of this Court's class certification order. Schutte Decl. ¶ 8. Because this case lasted for a number of years, other attorneys left, were added, or took leaves of absence as time passed. Bartosz Supp. Decl. ¶ 3; Welch Supp. Decl. ¶¶ 3-4.

Welch Supp. Decl. ¶ 5. Reductions for overstaffing or "duplication" are warranted "only if the attorneys are *unreasonably* doing the *same* work." *Johnson*, 706 F.2d at 1208 (emphasis in original). Defendants have identified no instances in which Plaintiffs' attorneys were unreasonably engaged in the same work.[11]

C. Plaintiffs' counsel should be compensated for travel time and expenses.

Defendants' contention that Plaintiffs should not be compensated for any travel time or expenses for their out-of-state attorneys should be rejected.[12]

As explained in Plaintiffs' opening brief, Plaintiffs' counsel could have reasonably pursued out-of-state rates for their work in this case. Even where out-of-state attorneys are compensated at local rates, the Eighth Circuit has deemed it appropriate to compensate these attorneys for their travel between their normal location and the local jurisdiction. *Safelite Grp., Inc. v. Rothman*, 759 F. App'x 533, 536 (8th Cir. 2019) ("When out-of-state counsel have their

[11] Defendants suggest, without explanation, that it is unreasonable for Plaintiffs' counsel to seek compensation for one year of pre-filing investigation. Opp. at 8. Defendants do not dispute that Plaintiffs may recover fees for time spent investigating facts before the case was filed, nor could they. *See McDonald v. Armontrout*, 860 F.2d 1456, 1462 (8th Cir. 1988) ("Section 1988 . . . allows recovery of fees for time spent before [the complaint is filed] investigating facts and researching the viability of potential legal claims.").

This Court has previously recognized that this investigation was a "testament to [Plaintiffs' counsel's] diligence and dedication." Order Certifying Class, Doc. 183, at 17. Plaintiffs conducted a thorough pre-filing investigation into the deficiencies in the oversight of the administration of psychotropic medications in the Missouri foster care system in order to file a well-supported and properly plead complaint, and comply with their Rule 11(b) obligations. Although Plaintiffs appropriately could, Plaintiffs do not seek compensation for the entirety of that nearly two-year investigation, and instead have limited their request to the one year before the filing of the initial complaint.

Further, although Defendants mistakenly state the one year immediately prior to the filing of the original complaint was "exclusively spent on 'investigation,'" Opp. at 8, that time period also included, among other things, substantial work conducting legal research into the possible claims and drafting the complaint, as reflected in the time records.

[12] Defendants falsely assert that "[a]lmost all of the travel time was for travel from New York and California to Missouri in order for multiple attorneys to 'attend' all of the depositions taken in Missouri." Opp. at 8. That statement is clearly contradicted by the attorney time records, which demonstrate that more than half of the travel time was to attend mediation sessions or for Plaintiffs' ongoing investigation and stakeholder contacts. Welch Supp. Decl. ¶ 6. In addition, much of Plaintiffs' counsel's travel time was devoted to preparing for or following up on the work that they traveled to Missouri to accomplish. Bartosz Supp. Decl. ¶ 6.

Further, contrary to Defendants' suggestion, Plaintiffs are not seeking compensation for their attorneys to passively attend the depositions. Plaintiffs have limited their request to no more than two attorneys at each deposition, including attorneys who were taking or defending the deposition and those who were actively assisting in a second chair role. Bartosz Supp. Decl. ¶ 2; Welch Supp. Decl. ¶ 7.

fees reduced to a local rate, such a rate may be awarded for all legal work including travel time when that is the practice in the relevant market.") (internal quotation marks and citation omitted).

The Eighth Circuit has "long recognized a presumption . . . that a reasonable attorney's fee includes reasonable travel time billed at the same hourly rate as the lawyer's normal working time, absent a showing the award would be unreasonable, for example, because the lawyer did not customarily charge clients for travel time." *Ludlow v. BNSF Ry. Co.*, 788 F.3d 794, 803-04 (8th Cir. 2015) (internal quotation marks and citations omitted) (alteration in original); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, No. 2:13-CV-4022-NKL, 2018 WL 5848994, at *14 (W.D. Mo. Nov. 7, 2018) (fee awards include "travel expenses for attorneys"). Defendants have made no showing that local attorneys do not customarily charge for travel time or expenses at their normal rates. Ammann Supp. Decl. ¶ 6. Nonetheless, even though it would have been appropriate to do so, Plaintiffs do not seek their full hourly rate for travel time and have written off significant travel time and expenses. *See, e.g.*, Welch Decl. ¶ 20. Plaintiffs' modest request for travel time and expenses should be granted.[13]

D. Plaintiffs have substantially reduced their fees already and no "volume discount" is warranted.

As explained above, Plaintiffs made substantial reductions to their fee request, and then made a further 22.7%, or $1.18 million, reduction in the amount of fees and expenses that they are seeking here. Defendants now seek an *additional* fifty percent "volume discount," on top of Plaintiffs' reductions and Defendants' other reductions – resulting in an overall proposed reduction of more than 73%. Welch Supp. Decl. ¶ 14.

A "volume discount" is not warranted or appropriate here, particularly in light of the substantial reductions Plaintiffs have already made. In *Hiltibran v. Levy*, No. 10-4185-CV-C-NKL, 2011 WL 5008018, at *5 (W.D. Mo. Oct. 20, 2011), this Court made a "volume discount,"

[13] A number of Plaintiffs' counsel's travel time entries, totaling about 59.1 hours, were for local travel or travel within the state of Missouri, which would have been incurred even if counsel were based in Missouri. Welch Supp. Decl. ¶ 6; Ammann Supp. Decl. ¶ 5. Further, some travel was in fact more economical than if Missouri counsel had been used, because the destination was closer to where Plaintiffs' counsel is based than it is to Missouri. Ammann Supp. Decl. ¶ 5.

reducing the claimed fees "by an extra fifteen percent, resulting in a twenty percent total discount to account for proper billing judgment," in part based on a recognition of "the national economic climate" in 2011. A year later, in *Comas*, another judge in this District similarly gave a "volume discount," and explained "[b]ecause plaintiffs' counsel have already voluntarily reduced their countable fee claim hours by 10 percent, the Court will only reduce the adjusted initial fee claim by an additional 10 percent[], consistent with the 20 percent reduction posed by Judge Laughrey in *Hiltibran*." *Comas*, 2012 WL 5354589, at *5. Plaintiffs have already discounted their fees claim hours by more than the "volume discount" reductions made in either *Hiltibran* or *Comas*. A greater reduction would undermine the civil rights enforcement laws and Supreme Court precedent that "counsel for prevailing parties should be paid, as is traditional with attorneys compensated by fee-paying clients, for all time reasonably expended on a matter." *Hensley*, 461 U.S. at 447 (internal quotation marks and citation omitted).[14]

Further, Defendants' litigation conduct created a significant amount of Plaintiffs' counsel's work. To give Defendants a "volume discount" under such circumstances would create a perverse incentive to governmental defendants in determining litigation tactics. Defendants "cannot litigate tenaciously and then be heard to complain about the time necessarily spent overcoming [their] vigorous defense." *Weitz Co. v. MH Washington*, 631 F.3d 510, 530 (8th Cir. 2011) (internal quotation marks and citation omitted).

IV. CONCLUSION

As authorized under 42 U.S.C. § 1988, Plaintiffs respectfully request that the Court award them their reasonable attorneys' fees in the amount of $3,894,975.22 and expenses in the amount of $132,907.56.

[14] That the attorneys' fees would ultimately be paid by the taxpayers does not justify the reduction Defendants seek. "Section 1988's aim is to enforce the covered civil rights statutes, not to provide 'a form of economic relief to improve the financial lot of attorneys.'" *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010) (citation omitted). "[T]he lodestar method yields a fee that is presumptively sufficient to achieve this objective." *Id.* In many § 1988 cases, local governments pay the fees, but in all § 1988 cases, this "strong" presumption applies. *Id.* at 552, 559. Defendants cite the Supreme Court's recognition in *Perdue* that "fees are paid in effect by state and local taxpayers," but there the Court cautioned against *enhancing* the lodestar without sufficient reason, and did not suggest these concerns justified cutting the lodestar by half or more. *Id.* at 559.

DATED: October 17, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing was filed electronically with the Clerk of the Court on October 17, 2019, to be served by the operation of the Court's CM/ECF electronic filing system upon all parties.

/s/ *Poonam Juneja*
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