

**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.)	

**SUPPLEMENTAL DECLARATION OF LEECIA WELCH IN SUPPORT OF
PLAINTIFFS’ MOTION FOR FEES AND EXPENSES**

I, Leecia Welch, do hereby declare as follows:

1. I submit this declaration to address issues raised by Defendants in their opposition to Plaintiffs’ Motion for Fees and Expenses.

Case Staffing and Time Sheets

2. As noted in my previous declaration, I have been an attorney at the National Center for Youth Law (“NCYL”) since 2004. During my nearly fifteen years at NCYL, it has always been our practice to staff cases as leanly and efficiently as possible. Over the past three years, our attorneys have been extraordinarily busy, and we have been even more diligent in our efforts to divide case tasks efficiently.

3. Our staffing decisions on this case have been very deliberate and reflected the professional strengths and personal circumstances of our team members, and staffing changes. As noted previously, Bill Grimm played a key role on the case due to his deep substantive knowledge of psychotropic medications and their misuse in the foster youth population and his experience with systemic remedies. Tragically, during the pendency of this case, Mr. Grimm was diagnosed with cancer, and he passed away in April of 2019. Over time, it was imperative

that I play a greater role than originally anticipated because of Mr. Grimm's health problems. Mr. Grimm and I always coordinated our work carefully to ensure maximum efficiency.

4. As reflected in our time records, not all of NCYL's attorneys who billed time on this case worked on it during the same time periods. NCYL's staffing on the case needed to account for the 6-month parental leave of Poonam Juneja, who was a key member of the team. During that time, Freya Pitts took responsibility for a variety of tasks that Ms. Juneja had previously been managing. Both Ms. Pitts and Ms. Juneja overlapped on the case for a brief period when Ms. Juneja transitioned back from leave. Notably, while both Amanda Grill and Jacqueline Stolzenberg worked on the case as fellows at NCYL, each had a one-year fellowship at NCYL and they were not at NCYL at the same time; Ms. Grill was a fellow from 2017-2018 and Ms. Stolzenberg from 2018-2019.

5. NCYL and Children's Rights also worked closely throughout this case to ensure an efficient division of labor. Examples included assigning particular attorneys primary responsibility to work with different experts; assigning particular attorneys to take primary responsibility for taking or defending each deposition; and assigning document review to particular attorneys, which was generally allocated by the subject area or named plaintiff to whom the documents related. Any duplication of effort between the firms on the case is more than accounted for by the billing judgment reduction plaintiffs' counsel made of more than 22% in fees and expenses, in addition to other reductions.

6. Defendants incorrectly state, "Almost all of the travel time [in Plaintiffs' time records] 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. When I examined the time records for all four organizations, I calculated that, as shown in the time records or when read in context, of the total of approximately 814 hours of travel time documented on Plaintiffs' counsel's time sheets, about one-third of the travel was to participate in depositions, about one-third was to conduct stakeholder interviews and ongoing investigations, and about one-quarter was for in-person

mediation sessions. The remaining travel time included travel to meet with experts or for other miscellaneous matters. In addition, I found that at least 59.1 hours was devoted to local travel or travel within Missouri, which would have been incurred even if counsel were based in Missouri.

7. Further, Plaintiffs' counsel has not billed for attorneys to attend depositions passively. We have limited our 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. For example, on November 29, 2018, I billed for "Attend I. Doxley deposition." Ms. Pitts took that deposition as the first chair, and I participated in the deposition as a second chair. Where more than two attorneys attended a deposition, even where the additional attorney actively supported taking or defending the deposition, Plaintiffs have waived the time of those additional attorneys.

8. Defendants also incorrectly state that "the largest portion of the work performed in this case took place prior to 2018." Opp. at 6. When I reviewed the time sheets for NCYL and its three co-counsel organizations, I calculated that we were collectively seeking compensation for 3,116.0 hours of work performed in 2016 and 2017, and 8,301.6 hours of work performed in 2018 and 2019.

Past NCYL attorneys' fee recoveries

9. Defendants cite NCYL's recent attorneys' fee awards to argue that, because the amount NCYL requests here exceeds those amounts, Plaintiffs are seeking a windfall. That is false. In fact, Plaintiffs' counsel has written off a significant amount of the time that they have devoted to this litigation. Further, looking at only two years of NCYL's attorneys' fee recoveries does not give an accurate picture of NCYL's fee recovery cycles, particularly two years where NCYL devoted a significant amount of time and resources to this litigation, instead of other cases which might have generated fees. The amount of fees that NCYL recovers year to year is uneven, depending on a number of factors, including the number of cases NCYL attorneys are actively litigating, the number of cases for which NCYL attorneys are receiving attorneys' fees

for monitoring activities, and the number of NCYL’s cases that are resolved. Defendants point to NCYL’s attorneys fee awards from 2017 and 2018, when those recoveries were \$434,535 and \$187,590, respectively. In contrast, NCYL recovered \$869,692 in attorneys’ fees in 2012, and \$899,628 in 2013. These amounts reflect a negotiated total team recovery of \$3.75 million in *Katie A. v. Bonta* and \$3.1 million in *T.R. v. Strange* (not including on-going annual monitoring fees).

10. Although NCYL attorneys carefully analyze our likelihood of success prior to filing any of our cases, such litigation always comes with great financial risk to our organization – especially given the many years it often takes to litigate a case. As an organization, we are willing to accept the risk because we believe our clients’ legal claims are important and that they (and all the children they seek to represent) are entitled to zealous advocacy. Any fee recovery our attorneys receive is used to support future litigation on behalf of other children. My colleagues and I consider it a privilege and an honor to work on behalf of our clients. We do so not in the hopes of a “windfall” as characterized by Defendants, but out of a sincere desire to improve the lives of children and families.

Missouri Lawyers Weekly Billing Rates Survey and Plaintiffs’ Requested Rates and Recovery

11. I have reviewed the Missouri Lawyers Weekly (“MLW”) Billing Rates surveys from 2017, 2018, and 2019.

12. The 2019 edition of the MLW survey contained rates information for Missouri attorneys at one firm, Shook, Hardy & Bacon, whose practice area was identified as “public interest class action.” For each of those attorneys, I looked up the year that they graduated from law school on their law firm’s website; one attorney’s law school graduation year was not listed on their law firm’s website, so I looked up his year of admission listed on the Missouri Bar website. The information that I found from those sources is listed here:

Name	Hourly Rate	Law School Graduation Year
Stan Sexton	\$770	1977
Andrew Carpenter	\$680	1994

Brent Dwerlkotte	\$465	2010 (Date of admission to Missouri Bar)
Russell Shankland	\$465	2010
Britta Stamps	\$375	2015
Emily Sellers	\$320	2016

The hourly rates that Plaintiffs have requested for Plaintiffs' attorneys are substantially less than the rates charged by the Shook, Hardy & Bacon attorneys with a comparable number of years of experience. For example, Plaintiffs seek a rate of \$500 for Mr. Grimm, who graduated from law school in 1975. This rate is 35% lower than Mr. Sexton's rate.

13. The rates that Plaintiffs have requested are well within the prevailing rates within the local Missouri community. In fact, the average rate that Plaintiffs seek for Plaintiffs' attorneys' time is less than the average rate of \$382 per hour that Defendants put forward for Missouri attorneys. I calculated the overall average hourly rate that Plaintiffs seek for Plaintiffs' attorneys' time to be about \$364 per hour; when excluding travel time, which we have charged at half of our normal rate, and time where attorneys charged the paralegal rate, I calculated the average hourly rate for Plaintiffs' attorneys to be approximately \$379 per hour.

14. Plaintiffs have exercised substantial billing judgment and reduced our fee request by a significant amount. After Plaintiffs had already made a number of reductions through the exercise of billing judgment, and before Sterling Analytics reviewed Plaintiffs' counsel's hours and expenses, Plaintiffs' fees and expenses totaled \$5,211,885.60. In Plaintiffs' fee request, Plaintiffs' counsel have requested compensation for fees and expenses totaling \$4,027,882.78, which represents a reduction of 22.7% from the amount before Sterling Analytics completed their review.¹ Defendants assert in their brief that Plaintiffs' counsel should be awarded approximately \$1.36 million total. Opp. at 13. That amount represents a reduction of 66.2% from the amount that Plaintiffs have requested in our motion.² The amount that Defendants

¹ This percentage was calculated as follows: (\$5,211,885.60 minus \$4,027,882.78), divided by \$5,211,885.60, then multiplied by 100 to convert to percentage.

² This percentage was calculated as follows: (\$4,027,882.78 minus \$1,360,000), divided by \$4,027,882.78, then multiplied by 100 to convert to percentage.

assert is appropriate also represents a reduction of 73.9% from Plaintiffs' fee and expense total before the review by Sterling Analytics.³

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of October 2019 in San Francisco, California.


Leecia Welch

³ This percentage was calculated as follows: (\$4,027,882.78 minus \$1,360,000), divided by \$4,027,882.78, then multiplied by 100 to convert to percentage.