

**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 SAMANTHA M. BARTOSZ IN SUPPORT OF
PLAINTIFFS’ MOTION FOR FEES AND EXPENSES**

I, Samantha M. Bartosz, 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.
2. On pages three and seven of their response, Defendants seek a reduction in the attorneys’ fees sought by Plaintiffs because Plaintiffs’ collective billing records reflect that 20 attorneys submitted time for work on this matter over the life of the case, from investigation through settlement. Defendants misconstrue the nature of the overall work effort that is represented by these billings. Plaintiffs’ counsel did not deploy a team of 20 lawyers to scatter out on an *en masse*, duplicative, and inefficient work effort. Quite to the contrary, Lead Counsel at Children’s Rights, the National Center for Youth Law, and Morgan Lewis & Bockius coordinated the management of the overall attorney work effort dedicated to this litigation in a manner that would avoid unnecessary duplication of work. Lead Counsel organized and assigned individual attorney teams to conduct legal

work on particular trial preparation tasks. These teams, typically staffed with a lead and/or senior staff attorney and a staff attorney, pursued the legal work related to their assigned tasks. Such assignments included document review and deposition taking in connection with certain fact witnesses (for purposes of their request for fees, Plaintiffs submit time for only two billing attorneys per deposition, including first seat interrogators and supporting second seat attorneys), legal research and drafting in relation to motion practice, appellate work, the retention and preparation of specific expert witnesses, and mediation practice including the drafting of settlement proposals and the preparation of a final, consolidated agreement. In addition, certain attorneys were assigned to the pre-filing investigation of Plaintiffs' legal claims and the retention and ongoing management of Named Plaintiffs and Next Friends. Through this case management structure, Plaintiffs' counsel was able to avoid hundreds of hours of potentially duplicative work effort. Lead Counsel directed the attorney workforce assigned to this case with a constant eye on efficiency. It also should be noted that this case required Plaintiffs' counsel with specialized knowledge regarding psychotropic medications and the systemic mechanisms utilized to assure their safe administration. Given this reality, Children's Rights and the National Center for Youth Law assigned attorneys possessing specialized knowledge to conduct a substantial number of the depositions taken and to consult with retained expert witnesses.

3. Moreover, twenty lawyers were not continuously active on this litigation over the life of the case. For example, attorney Catherine Frizell left her employment at Children's Rights midway through the discovery process. Attorney Jonathan King became active in the case in 2018, devoting much of his time supporting preparation of the expert report

submitted by Dr. Christopher Bellonci. Likewise, attorney Daniele Gerard became active in the case in 2018, focusing her work effort on the expert report submitted by Dr. Michael Naylor and the mediation process. In short, at any given point in time, far less than twenty lawyers were performing work on the case.

4. Nonetheless, this is a large and complex case that required a substantial work effort. To assure reasonable billing, Plaintiffs engaged Sterling Analytics to conduct an independent audit of their billed time and then made reductions recommended by Sterling before submitting their fees application to this Court.
5. On page nine of their response, Defendants further seek to have this Court “disallow the entire number of hours billed for ‘travel time’ for the Plaintiffs’ out-of-state attorneys.” Defendants’ contention is based on the impractical notion that all or a substantial portion of all fact depositions, expert engagement and support, and mediation efforts in Missouri could have been undertaken by Plaintiffs’ individual local counsel, John Ammann. This contention is fanciful at best, and refuted by Mr. Ammann’s own declarations. Significant investment of hours and acquired expertise were required to conduct the fact discovery, expert discovery, and mediation work connected to the travel time billed by Plaintiffs’ out-of-state counsel. Under no circumstances could this work have been competently completed by a single lawyer. Plaintiffs’ counsel called upon the necessary members of their lawyer team to complete these tasks efficiently and effectively. As stated above, Plaintiffs also assigned counsel with the requisite specialized knowledge to undertake the professional work on tasks involving technical knowledge.
6. Moreover, Defendants raise an objection to the completeness of the time entries that capture the travel undertaken by Plaintiffs’ out-of-state counsel. Plaintiffs have billed all

travel time at 50% of the attorney's rate. This is a conservative approach to charging travel time which, of course, prevents the travelling attorney from meaningfully engaging in work on other billable matters, thereby imposing an opportunity cost. It is customary and routine, however, for traveling attorneys from Children's Rights to perform preparation work on the particular case at hand while on the airplane to the work destination, and to perform follow-up work on the return trip, for example, by drafting contact memoranda summarizing meetings that took place during the trip. This work could properly be charged and justified at 100% of the attorney's billing rate.

Nonetheless, in recognition of the fact that legal work conducted while travelling may be less efficient, Plaintiffs are billing at a vastly reduced 50% rate. This is entirely reasonable and, if anything, conservative. There is no basis for eliminating Plaintiffs' reasonable travel time.

7. Beginning on page nine of their response, Defendants next challenge the time billed in connection with legal work performed by attorney Stephen Dixon. Defendants fail to present to this Court the full scope of Mr. Dixon's legal work in this case. As stated in my initial declaration in support of this fee application, Mr. Dixon principally directed his efforts to building and maintaining relationships with Next Friends, potential witnesses, and others. This work crossed over multiple aspects and phases of this litigation, often spurred by Defendants' own aggressive tactics, and required substantial attention. Mr. Dixon conducted vital work in (a) initially being retained by the Named Plaintiffs and their Next Friends and capturing the facts surrounding their experiences, (b) countering legal challenges by Defendants to the adequacy of the Named Plaintiffs or Next Friends to appear in this litigation on behalf of the class, (c) addressing Defendants' unilateral

decision to deny certain of the Next Friends access to the child on whose behalf they appeared and ameliorating the potential harmful impact of that state action, (d) preparing certain Next Friends for their appearances at depositions and mediation sessions, (e) continually apprising the Next Friends of the status of ongoing mediation efforts and proposals, consulting on strategy, and obtaining authority as needed along the way to reach agreement on terms, and (f) routinely advising and consulting with the Next Friends as to the status of the litigation and strategic decisions being made to propel it forward. The Next Friends took and take seriously their role as clients, and Mr. Dixon invested the hours necessary to maintain fully informed attorney/client relationships. Finally, it must be noted that skilled interviewing and trust building is vital to creating and maintaining relationships with Next Friends in this type of litigation involving sensitive knowledge and the power of the state. This takes time and repeated interactions, including in-person meetings and phone calls. Mr. Dixon skillfully provided this counsel.

8. Moreover, Defendants complain that Mr. Dixon's timesheets often refer to unnamed "stakeholders" and do not reflect the content of his discussions. This approach to time entries is intentional to protect attorney work product gathered over the course of the litigation and to reduce the possibility that some form of retaliation – as occurred here in the instance of children's access to certain Next Friends being denied by Children's Division officials – is exacted on individuals who have provided information to support the reform effort. Offering no support for their position, Defendants ask that Mr. Dixon's time be disallowed in its *entirety*. Plaintiffs respect the province of this Court to assess the reasonableness of the hours charged by all attorneys on this case, including Mr. Dixon; however, there is no basis to altogether exclude the time billed by Mr. Dixon on

fundamentally necessary work, much of it required to respond to Defendants' aggressive tactics. The time documented by Mr. Dixon represents reasonable and necessary attorney work.

9. Defendants finally assert, without basis, that Plaintiffs are seeking a windfall recovery here and, therefore, request that a massive and wholly unjustified 50% volume discount be applied by the Court, only after the Court excludes *all* time billed by Mr. Dixon, excludes *all* travel time billed by out-of-state attorneys, and significantly reduces hourly rates. Despite the gross magnitude of the discount they seek, Defendants do not even attempt to itemize for this Court the alleged instances of excessive or inadequate billing that materially compound the overall time billed by Plaintiffs' counsel, much less act to *double* the total hours submitted for reimbursement - they make only cursory accusations of excessive billing (without citing actual examples in Plaintiffs' billing records) and rely on the unwarranted assumption that the staffing of 20 billing attorneys over the life of the case is *per se* excessive. As stated above, Plaintiffs engaged Sterling Analytics to review their billing and excluded any questionable time entries before submitting their claim to this Court. Lead Counsel also exercised sound case management and billing judgement during the course of the litigation to place appropriate controls on Plaintiffs' overall investment of attorney time.
10. Defendants cite to recent financial statements published by Children's Rights and the National Center for Youth Law and contend that the reimbursement amount sought here exceeds the amount of attorneys' fees recoveries disclosed in those statements and, therefore, must constitute a windfall. This is patently untrue. As Defendants are no doubt aware, federal court litigation is unpredictable regarding when a given case is resolved.

Some cases settle early on, while others require trial and subsequent appeals to resolve. This uncertainty means that the recovery of attorneys' fees by Children's Rights is uneven year-to-year as cases work through the court system. Defendants point to 2016 and 2017, in which the Children's Rights financial statements reported attorneys' fees collections in the total amounts of \$1,761,736 and \$735,090, respectively. By contrast, in 2009 Children's Rights collected attorneys' fees in the amount of \$11,547,690 and in 2013 it collected fees in the amount of \$6,128,158. There simply is no basis for Defendants to suggest a windfall. Indeed, the total attorneys' fees reimbursement sought by Plaintiffs here results from a highly conservative application of the lodestar rule.

11. In fact, the attorneys' fees recovery sought by Plaintiffs here is commensurate with fee awards secured in similar federal class action litigation in other jurisdictions. Thus, Children's Rights secured a fees award of \$3,974,493 in 2008 in relation to *Olivia Y. v. Barbour* in the Mississippi federal court. Likewise, Children's Rights recovered \$5,999,839 and \$5,547,851, respectively, in relation to *Kenny A. v. Deal* and *Dwayne B. v. Granholm* in the federal courts in Georgia and Michigan in 2009. As a final example, Children's Rights secured a fees award of \$5,565,794 in *D.G. v. Yarbrough* in the federal court in Oklahoma in 2013. Each of these lawsuits, as is true here, was a structural reform class action that settled after a sustained period of discovery and motion practice and before trial on the merits. Fees were litigated in Oklahoma and Georgia and resolved by settlement in the other matters referenced above.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th
day of October in New York, New York.

A handwritten signature in black ink, appearing to read "Samantha M. Bartosz", written over a horizontal line. The signature is cursive and stylized.

Samantha M. Bartosz