IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALEKSANDER SHUL, et al.	)	CASE NO.: 1:21-cv-01945
	)	
	)	
Plaintiffs,	)	JUDGE CALABRESE
	)	
vs.	)	
	)	
CITY OF UNIVERSITY HEIGHTS,	)	
	)	
Defendant.	)	

DECLARATION OF MARCUS SIDOTI

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1. Retention

I was retained by the Defendant to review the January 17, 2023 [ECF. Doc 48] Memorandum In Support of Plaintiff's Motion for Attorney's Fees and Costs and asked to provide my opinion on an attorney fee award.

2. General Qualifications and Background

I am a partner at the law firm of Friedman, Gilbert + Gerhardstein (FG+G) with offices in Cleveland and Cincinnati, Ohio. I chair our civil rights litigation practice with two other partners within the firm. FG+G was formed from the merger and acquisition of Friedman & Gilbert LLC and Gerhardstein & Branch LLP which were founded by partners Gordon Friedman, Terry Gilbert and Alphonse Gerhardstein. The firms independently have over thirty years of experience in civil rights matters before their merger. We practice in the areas of civil rights and criminal defense,

with a focus in complex §1983 litigation. Prior to the formation and my employment as partner with FG+G, I was a partner of Jordan | Sidoti LLP where I also practiced in the areas of civil rights and criminal defense.

I am a graduate of Cleveland State College of Law and completed my undergraduate studies at the University of Findlay. I have been licensed to practice in the State of Ohio since 2004. I am admitted in the Northern and Southern Districts of Ohio, the Sixth Circuit Court of Appeals, as well as the Western District of Pennsylvania. I have been admitted pro hac vice to numerous state and federal courts throughout my career. I am a CJA Panel member to the Northern District of Ohio since 2005. I have been recognized and received awards from the National Trial Lawyers Association; The American Society of Legal Advocates; Super Lawyers of Thomson Reuters: and the American Academy of Trial Lawyers.

Based upon my experience litigating civil rights cases in Ohio and beyond, and my experience as a partner of FG+G, I am familiar with the prevailing, customary market rates lawyers in Northeast Ohio charge for their services, including hourly rates charged for legal services protecting federal constitutional, and statutory civil rights. I am also familiar with the work associated in litigating such cases both in delegation of duties and staffing. My experience includes all stages of civil rights litigation from pre-suit mediation to briefing, inclusive of interlocutory appeals, and if successful, through trial. In the last three years alone, I have tried four separate, complex civil rights cases to verdict in Ohio and Virginia which yielded seven figure jury verdicts for my clients.

3. Factual Background

On September 6, 2019, the City of University Heights ("City") filed a municipal housing case against University Realty USA ("URU") in the Shaker Heights Municipal Court, alleging that URU violated University Heights Codified Ordinances. URU entered a plea of no contest to all three counts and was sentenced to pay a fine with a portion suspended. On June 7, 2021, the City filed a case against Plaintiffs (Shul, Shnior Zalman Denciger, and URU) in the Cuyahoga Court of Common Pleas seeking a temporary restraining order ("TRO"), preliminary and permanent injunctions. Plaintiffs and the City stipulated to the entry of a TRO in the state case pending hearing on the preliminary injunction on June 29, 2021, and stipulated to an amended and extended TRO in the state case on July 27, 2021. Plaintiffs filed an answer, counterclaim, and third-party complaint against the Mayor of University Heights in Cuyahoga County on September 14, 2021. On October 13, 2021, Plaintiffs filed a complaint against the City in the Northern District of Ohio seeking injunctive relief and monetary damages under several claims including the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause of the First Amendment to the U.S. Constitution, and Ohio state law claims.

Plaintiffs appeared for a hearing on November 22, 2021, before the City Planning Commission, and the City recommended granting Shul's application for a special use permit. On December 6, 2021, the City approved the application subject to Shul obtaining a Certificate of Occupancy and other contingencies recommended by the Planning Commission. Plaintiffs and the City stipulated to the entry of a preliminary injunction in the state case on March 9, 2022. The City filed an answer to Plaintiffs' complaint in the federal case on April 18, 2022. The City filed notice of service of their offer of judgment on May 6, 2022.

On June 1, 2022, the first of fifteen (15) Joint Proposed Stipulations for an Additional Time to Respond to Defendant's Offer of Judgment, agreed to by all parties, were filed throughout the case until resolution.

A settlement agreement was reached in the federal case and filed on December 23, 2022. Based on the settlement agreement, the Court entered judgment closing the case on December 27, 2022. On January 17, 2023, a motion for Attorney's Fees and Costs was filed by the Plaintiffs, and the Court granted the joint motion for an extension until March 17, 2023, to respond to the motion for fees and costs.

4. Case Materials Reviewed

In addition to Plaintiffs' motion for attorney's fees and the documents related to that filing, I reviewed the pleadings and dockets for the relevant cases associated with this litigation. Those materials included:

1. Shaker Heights housing docket
2. Cuyahoga County Court of Common Pleas 21-CV-948437 docket
3. Complaint
4. Plaintiffs Motion for Preliminary Injunction
5. 42 U.S. Code § 2000cc
6. Defendant's Brief in Opposition to Plaintiffs Motion for Preliminary Injunction with exhibits
7. Defendant's Amended Brief in Opposition to Plaintiffs Motion for Preliminary Injunction Motion to Strike
8. Defendant's Brief in Opposition to Motion to Strike
9. Answer and Third-Party Complaint
10. Counterclaim
11. Agreed Preliminary Injunction
12. 8th District Court of Appeals Case docket 110728
13. Northern District of Ohio 1:21-CV-1945 docket and entries
14. Complaint
15. Motions to Appear Pro Hac Vice

16. Defendant's Motion to Stay
17. Joint Status Reports 1/14/2022, 2/14/2022, 3/11/2022
18. Answer to Complaint
19. Settlement Agreement
20. Memorandum in Support for Attorney's Fees

I understand that I must be qualified to offer an opinion by knowledge, skill, experience, training, or education. I have provided in this report my qualifications that I believe prove my qualifications to provide my opinion in this case.

I reviewed the identified materials to reach conclusions; developed a set of material and relevant facts only after a review of all materials provided; and assumed that information to be true for purposes of my analysis.

5. Hourly Rate Analysis

Determining a reasonable fee begins with calculating the product of a "reasonable hourly rate" and the "number of hours reasonably expended on the litigation," known as the "lodestar" amount. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); *Blum v. Stenson*, 465 U.S. 886, 888, 104 S.Ct. 1541, 1543, 79 L.Ed.2d 891 (1984).

My analysis begins with the reasonableness of the hourly rates for the attorneys involved in the litigation. Starting with the graph provided on page 6 of [ECF Doc. 48-1], The Storzer & Associates, P.C. ("Storzer") firm is located in Washington D.C. and per its online presence, consists of thirteen (13) lawyers whose practice focuses in the areas of the instant litigation. Storzer bills at rate of five hundred ($500.00) per hour for its participating members ranging from 20 - 33 years of legal experience. Concurrently, the firm is requesting the same hourly rate for its 2nd year associate, Attorney Gross with twenty-four (24) years *less* experience than the average of the other participating Storzer attorneys and higher than the senior most litigants from local firm, Tucker Ellis | LLP. In *Ohio Right to Life Soc., Inc. v. Ohio Elections Com'n*, 590

Fed.Appx. 597 (6th Cir. 2014), the Court held that a "district court has broad discretion to determine what constitutes a reasonable hourly rate for an attorney." *Wayne*, 36 F.3d at 531–32. "[T]o arrive at a reasonable hourly rate, courts use as a guideline the prevailing market rate, defined as the rate that lawyers of comparable skill and experience can *reasonably expect to command within the venue of the court of record*." *Gonter v. Hunt Valve Co*., 510 F.3d 610, 618 (6th Cir.2007) (citations omitted).

Tucker Ellis began working with Storzer in the late summer of 2021 as "experienced land-use and litigation counsel." [ECF Doc. 48 at 2]. Tucker Ellis, a firm with offices located in seven (7) cities throughout the United States, including Cleveland, was formed in 2003 by partners of Arter & Hadden LLP immediately after its dissolution the same year. As local counsel for the litigation, Tucker Ellis proposes a rate of Two hundred sixty ($260.00) dollars per hour for their 2nd year associate, Attorney Easton. I find this to be a reasonable hourly rate, consistent with the prevailing market rate, and a rate that lawyers of comparable skill and experience can reasonably expect to command within that court's venue. See *Geier*, 372 F.3d at 791. After a review of the fees submitted, I believe that Attorney Gross should be compensated at the same rate as attorney Easton, having the same experience in the same litigation which is $260.00 per hour under this analysis. Attorney Easton's rates are consistent with similar rates for services in similar matters. Concluding this portion of the analysis with the hourly rates *only,* sought by each additional participating professional, and subject to the Court's analysis for the pertinent market rate adjustment[s], my opinion is that the hourly billing rates identified in ECF Doc. 48 for the remaining individuals are not unreasonable.

6. Fee Analysis

Pursuant to Plaintiffs' Motion for Attorney's fees, Counsel is seeking $421,587.75 in fees, based on 968.40 hours attributed to the thirteen (13) professionals. The complaint was filed on or about October 13, 2021. [ECF Doc. 1]. The causes of action mirror those filed in the underlying state claim in Cuyahoga County ("the related litigation") filed by way of a counterclaim entered on the docket on September 14, 2022. (See C.C. case number 948437). Those separate documents were filed with the same substantive information and filed twenty-nine (29) days apart. Pursuant to the Plaintiffs' Memorandum in Support of Fees, Plaintiffs attribute one hundred seven and three-tenths (107.31) hours to the seven (7) different lawyers for the "drafting" and "review" of those filings. [34.48 hours for the counterclaim and 72.83 for the federal complaint]. The time attributed to the complaint yield an additional 72.83 hours for the same causes of actions previously identified in the state counterclaim.

Unreasonably expended hours are generally categorized as those which are excessive in relationship to the work done, are duplicative, or simply unnecessary. Hours that are "excessive, redundant, or otherwise unnecessary" are not reasonably expended and must be excluded. *Hensley*, 461 U.S. at 430, 434. In *Howe v. City of Akron*, N.D. Ohio No. 5:06-CV-2779, 2016 WL 916701, aff'd, 705 Fed.Appx. 376, the Court questioned the need for the involvement of two law firms in the litigation, given the fact that one firm regularly litigated pertinent cases, and its attorneys had significant trial experience litigating these types of cases. The same question should be addressed by this Court. Plaintiffs' counsel's supporting billing statements are replete with instances of overstaffing, redundancy, and excessiveness. Their fee petitions request compensation for instances where multiple attorneys performed the same task, participated in conferences or communications when less attorneys would have sufficed, or spent excessive

amounts of time on simple tasks. See *Hisel v. City of Clarksville*, No. 3:04-0924, 2007 WL 2822031, at *4-6 (M.D. Tenn. Sept. 26, 2007) (reducing attorney's fee award for excessive billing for simplistic tasks where the issues in the case were "hardly new or novel" to counsel). District courts have discretion to cut hours for duplication of effort or padding of an attorney's hours. See *Northcross v. Bd. of Educ. of Memphis City Sch.*, 611 F.2d 624, 636-37 (6th Cir. 1979).

Additionally, the Sixth Circuit has observed that while "multiple representation can be productive[,]" there is also "the danger of duplication, a waste of resources which is difficult to measure." *Coulter v. State of Tenn.*, 805 F.2d 146, 152 (6th Cir. 1986). When calculating a fee award, the court should exclude time that is excessive, redundant, or inadequately documented." *Jascha v. Colvin*, N.D.Ohio No. 3:15CV711, 2016 WL 736195, see also *Mullins v. Astrue*, 2012 WL 298155, *2 (S.D.Ohio). Courts are obligated to prune unnecessary hours from fee petitions because courts are not authorized to be generous with the money of others, and it is as much the duty of courts to see that excessive fees and expenses are not awarded as it is to see that an adequate amount is awarded." *McWhorter v. Comm'r of Soc. Sec.*, 2014 WL 3842854, *4

More often than not, civil rights matters involve considerable litigation. It takes months after the filing of the complaint until a scheduling conference ("CMC") for the litigation to commence by rule. After the CMC, counsel would begin to prepare for the discovery phase inclusive of discovery exchanges, deposition preparation and scheduling, briefing, etc. None of which took place here. After the filing of the complaint on October 13, 2021, Plaintiffs were before the University Heights City Planning Commission ("City") on November 22, 2021, forty (40) days later. At that time, the City recommended granting Shul's application for a special use permit. The City approved the application subject to Shul obtaining a Certificate of Occupancy

and other contingencies recommended by the Planning Commission on December 6, 2021. Plaintiffs were permitted to operate and use their property as a house of worship conditional on following the same restrictions the City Planning Commission recommended on November 22, 2021 which were approved by City Council on December. 6, 2021. These exact conditions were adopted in the settlement agreement and subsequently reduced to paragraph three (3) of the same. (ECF Doc. 46). While Plaintiffs did receive a permit, settlement, and prevailing party designation for reasonable attorneys' fees, the Defendant got an enforceable agreement requiring the Plaintiffs to follow certain building/development requirements that the City had been seeking to enforce since before the instant litigation was filed. While the final settlement agreement included the same conditions accepted by the Plaintiffs as proposed by the Planning Commission in November 2021, Plaintiffs' counsel claims that an additional Eight hundred sixty-one (861.09) hours were reasonably spent.

It is well established that after determining the basic lodestar, the degree of success obtained is the most important factor in determining the reasonableness of a fee award. *Hensley,* 461 U.S. at 428. If the plaintiff achieved "excellent results," she should recover a full compensatory fee award. *Id.* at 435. If the plaintiff achieved "only partial or limited success," the court should consider whether the lodestar fee amount is excessive. *Id.* at 436. The court should award only the amount of fees that is "reasonable in relation to the results obtained." *Id.* at 440. Where multiple claims share interrelated facts, courts "focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Id.* at 435. Courts typically adjust the lodestar for limited success by applying a percentage reduction. See *Kentucky Restaurant Concepts Inc. v. City of Louisville*, 117 Fed. Appx. 415, 421 (6th Cir.2004) (upholding 35% reduction for "good" but not "excellent" success); *Farbotko v. Clinton*

County, No. 99–CV–1946 (DRH), slip op. at 11–12 (N.D.N.Y. Nov. 10, 2004), vacated and remanded on other grounds by *Farbotko v. Clinton Cty. of New York*, 433 F.3d 204, 207 (2d Cir. 2005)(40% reduction); *Laney v. Getty*, 2014 WL 5167528, *6 (E.D. KY Oct. 14, 2014) (40% reduction); *Cruz v. Toliver*, 2007 WL 1031621, *3 (W.D. KY Mar. 30, 2007) (50% reduction).

The Defendants have agreed pursuant to the settlement agreement, that the Plaintiffs qualify for an award of *reasonable* attorney's fees. Plaintiffs prevailed to the degree outlined in the settlement agreement to operate their place of worship, which was conditioned upon the contingencies that remained in place a month after the filing of the instant federal action, and a year before the settlement was reached. This should be considered in the Court's overall analysis in the relation to the results obtained.

I had hoped to provide the Court the benefit of a specific billing analysis, approving certain entries and questioning others, but the billing entries do not allow me to do that because the majority of the entries are block-billed. Block billing refers to grouping numerous tasks under a single entry. In my experience, courts, firms and clients alike disfavor block-billing because numerous entries are lumped together under one total leaving an individual to approximate the amount of time which should be allocated to each task. See *Imwalle v. Reliance Med. Prods.*, 515 F.3d 531, 553 (6th Cir. 2008); *Cleveland Area Bd. Of Realtors v. City of Euclid*, 965 F. Supp. 1017, 1021 (N.D. Ohio 1997), citing *In re Olson*, 280 U.S. App. D.C. 205, 884 F.2d 1415, 1426 (D.C. Cir. 1989). This analysis would be particularly important because experienced attorneys charge higher rates for their services, and thus are expected to perform legal work in an expedited manner while allowing a reviewing court to determine whether the amounts billed and the time spent in communicating information were reasonable.

The Court is now tasked with assessing the reasonableness of the fees sought by Plaintiffs' counsel, whether local counsel was necessary or duplicative yielding unreasonable fees. Whether or not a reasonable number of hours was spent now understanding how the litigation was postured, the pertinent time frames, and that the substantive portions of the settlement agreement that were negotiated before the crux of the pending attorneys' fees were amassed. With a nominal amount of time being spent in actual litigatory functions, many of the hours are attributed to sharing the same information amongst thirteen different professionals. I also considered the time spent litigating the State Claims which were identical to those brought in the federal complaint where a substantial amount of the hours accrued before the federal litigation even commenced.

As a result of the combination of vague entries, overstaffing and block-billing, it is difficult to identify specific excessive, redundant, and/or questionable time entries. As an alternative to a line-by-line reduction, the propriety of across-the-board reductions by a certain percentage has been recognized by the Sixth Circuit as an appropriate mechanism for addressing billing problems. See *Auto Alliance Int'l, Inc. v. U.S. Customs Serv.*, 155 F. App'x 226, 228 (6th Cir. 2005) (approving of across-the-board approach to fee determination) (citation omitted); *Schwarz v. Sec'y of Health & Human Serv.*, 73 F.3d 895, 906 (9th Cir. 1995) (across-the-board percentage cut is "a practical means of trimming the fat of a fee application") (quotation marks and citation omitted); *Ky. Rest. Concepts Inc. v. City of Louisville*, 117 F. App'x 415, 419 (6th Cir. 2004) (noting that while cutting a percentage of hours may appear "arbitrary," it is an "essentially fair approach").

Utilizing the guiding jurisprudence, my review of the materials identified, my experience identified above in civil rights matters from pre-suit mediation through complex litigation and

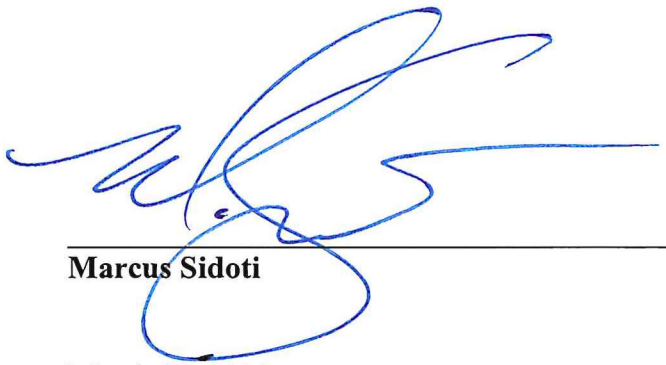
through trial, I believe the fees sought are more than what should be a reasonable fee award in the instant litigation.

7. Recommendation and Opinion

In determining the lodestar, I first recommend a reduction in the fee rate declared by Attorney Gross from the proposed $500.00 per hour, to $260.00 per hour, consistent with Attorney Easton and consistent with my analysis above. That would reduce the initial lodestar amount by $46,384.80 for a total of $375,202.95.

I further believe an across-the-board reduction of between 35% and 50% of the lodestar is reasonable to compensate for the inflation caused by block billing, overstaffing, and duplicative or vague entries. A 35% across-the-board reduction to the lodestar would yield a total figure of **$243,881.92** (375,202.95 x .65) while a 50% across-the-board reduction yields a figure of **$187,601.48** (375,202.95 x .5), For the reasons stated above, I recommend a reduction within this range.

I, Marcus Sidoti, hereby declare under penalty of perjury that the foregoing is my true and accurate declaration.



Marcus Sidoti

March 21, 2023