

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

TIMOTHY GUMM, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. 5:15-cv-41 (MTT)
)	
RICK JACOBS, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

ORDER

The parties reached a negotiated agreement that attorneys' fees and costs should be paid by the Defendants to class counsel in the amount of \$425,000. Doc. 256 at 26. The Plaintiffs then filed an uncontested fee petition seeking an award of such fees in compliance with Federal Rule of Civil Procedure 23(h). For the following reasons, that motion (Doc. 241) is **GRANTED**.

I. BACKGROUND

Plaintiff Gumm and the Settlement Class are represented by Sarah Geraghty, Aaron Littman, and Ryan Primerano of the Southern Center for Human Rights and four attorneys from Kilpatrick, Townsend & Stockton, LLP. See Docs. 210 at 5; 241 at 3. The parties engaged in extensive discovery, including taking and defending numerous depositions, retaining a psychologist to examine conditions in the Special Management Unit ("SMU") at Georgia Diagnostic and Classification Prison, reviewing a large volume of documents, and making numerous visits to the SMU. See Doc. 241 at 4. The parties negotiated a hard-fought settlement agreement which is fair, reasonable, and favorable

to the class. See *generally* Docs. 256; 256-1. Although the named Plaintiffs received modest incentive awards, the classwide relief is nonmonetary and consists of a consent decree regarding conditions of confinement, SMU assignment and review procedures, and monitoring procedures. See Doc. 256-1. The parties agreed that the Plaintiffs, as prevailing parties, were entitled to attorney's fees under 42 U.S.C. § 1988. Doc. 207-1 at 19. The parties separately negotiated an amount of \$425,000 for attorney's fees and expenses, and class counsel filed an unopposed motion for fees and expenses in that amount. Docs 256 at 26; 241.

Federal Rule of Civil Procedure 23(h) requires that notice of a motion for fees by class counsel must be "directed to class members in a reasonable manner" and that class members may object to the motion. The Court ordered the Plaintiffs' counsel to provide notice to class members. Doc. 251. The notice, which is attached to this Order for inclusion in the record, informed the class of counsel's claimed hourly rate, number of hours claimed, the nature of class counsel's work, and that class counsel were seeking \$425,000 total in fees and expenses. The notice also encouraged the class to file objections or comments, with filings to be postmarked no later than May 27, 2019. The class response, consisting of three comments, was positive. Charles Shepard filed an objection, expressing his belief that "[t]hese attorneys worked hard and accomplished a lot and deserve to be compensated . . . Honestly, I think they should have billed more hours." Doc. 265 at 1. David Zavala also opined that class counsel should have billed for more time, and he argued their hourly rate was too low, in light of the excellent results obtained. Doc. 268 at 1-2. Joseph Gittens wrote a letter in support of fees, stating that class counsel "did an excellent job and worked hard on the case

and should be compensated. Their efforts created beneficial changes for all inmates being housed at (SMU).” Doc. 261 at 1.

II. DISCUSSION

In a proceeding under 42 U.S.C. § 1983, the court may award the prevailing party reasonable attorney’s fees. 42 U.S.C. § 1988. As a threshold matter, the Plaintiffs are the prevailing parties. As the Court noted in its Order approving the settlement, the Plaintiffs obtained excellent results for the class members, and the Settlement Agreement provides for an injunction which “substantially affords to class members the relief the Plaintiffs sought regarding conditions and placement and retention in the SMU, without the cost and uncertainty of further litigation.” Doc. 256 at 27; see *Doe v. Busbee*, 684 F.2d 1375, 1379 (11th Cir. 1982) (“[A] party may be considered to be ‘prevailing’ if the litigation successfully terminates by a consent decree, an out-of-court settlement, a voluntary cessation of the unlawful practice by the defendant, or other mootng of the case where the plaintiff has vindicated his right.”).

“The 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.” *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008) (citation and quotation marks omitted). This number is called the “lodestar,” and “there is a strong presumption that the lodestar is the reasonable sum the attorneys deserve.” *Id.* (citation and quotation marks omitted). The district court should exclude “hours that were not reasonably expended,” such as work that was “excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). In determining whether a lodestar is reasonable, the district court may consider twelve factors enumerated in

Johnson v. Georgia Highway Express, Inc.: (1) the time and labor required, (2) the novelty and difficulty, (3) the skill required to perform the legal service properly, (4) the opportunity cost of the attorney's inability to work on other cases as a result of accepting this one, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount of money at issue and the results obtained, (9) the experience and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) attorney's fee awards in similar cases. 488 F.2d 714, 717-19 (5th Cir. 1974),¹ *overruled on other grounds by Blancher v. Bergeron*, 489 U.S. 87 (1989); *see also Blancher*, 489 U.S. at 92 ("*Johnson's* 'list of 12' thus provides a useful catalog of the many factors to be considered in assessing the reasonableness of an award of attorney's fees[.]").² Downward adjustment of the lodestar is "merited only if the prevailing party was partially successful in its efforts," a determination the district court makes on a case-by-case basis. *Resolution Trust Corp. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1150 (11th Cir. 1993). It is the burden of the party seeking an award of fees to submit evidence to support the hours and rate claimed, and "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433.

¹ The Eleventh Circuit has adopted as binding precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

² Although courts have considered the *Johnson* factors, recent precedent has limited *Johnson's* applicability. *See, e.g., In re The Home Depot, Inc. Customer Data Security Breach Litigation*, No. 17-14741 at 28, 28 n.17 (11th Cir. Jul. 25, 2019) ("The Supreme Court has made it plain that most, if not all, of the factors used to determine a reasonable fee are already subsumed in the lodestar, and it is not permissible to enhance a fee based on a factor that is subsumed. That would be double counting[.]") (quotation marks and citations omitted). As stated below, the Court finds that consideration of the *Johnson* factors does not warrant an adjustment to the lodestar in this case.

The Plaintiffs request an hourly rate of \$210. “A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation.” *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) (citation omitted). The relevant legal community is normally the district where the court sits, but a different community’s rates may be appropriate if local counsel is unwilling or unable to handle the case. *Brooks v. Ga. State Bd. of Elections*, 997 F.2d 857, 869 (11th Cir. 1993). Here, there were no lawyers in the Middle District of Georgia who were willing to represent the Plaintiffs or who had the necessary experience in prison litigation. Accordingly, the Atlanta, Georgia market is the relevant legal community. Class counsel have provided affidavits indicating that their customary rates, which range from \$265 for paralegals to \$805 for experienced attorneys, are in line with market rates, with the exception of counsel from the Southern Center for Human Rights, who do not typically charge hourly fees but have claimed at least \$210 in similar cases. See generally Doc. 241-1. Although satisfactory evidence of an appropriate rate in a legal community requires “more than the affidavit of the attorney performing the work,” *Norman*, 836 F.2d at 1299, the attorneys’ claimed rate of \$210 per hour is unquestionably reasonable for the Middle District of Georgia. See, e.g., *O’Neal v. Norfolk S. R.R. Co.*, 2018 WL 6005425, at *2 (M.D. Ga. Nov. 15, 2018) (finding \$405.00 was a reasonable rate for experienced counsel in complex civil litigation in the Middle District of Georgia). After reviewing the attorneys’ affidavits and considering their

qualifications and experience, the Court finds that the requested rate of \$210.00 is a reasonable rate for the attorneys in this case.³

The Plaintiffs spent a total of 3,437.1 attorney hours and 19.6 paralegal hours, after reducing their claimed hours for tasks that seemed excessive or redundant, on this case. Docs. 241 at 7; 241-1 at 4; 6; 8; 14; 16; 19; 21. The general rule is that hours reasonably expended on litigating a claim are compensable. *Bivins*, 548 F.3d at 1350. After reviewing the Plaintiffs' affidavits and description of work on the case, the Court concludes that class counsel reasonably expended 3,437.1 hours working on the case. Based on \$3,437.1 compensable hours and a reasonable rate of \$210.00, the lodestar is substantially in excess of the \$425,000 in fees and litigation expenses claimed.⁴ Further, after considering the factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), the Court finds that no adjustment of the lodestar is warranted.

Finally, class counsel requests litigation expenses in the amount of \$30,675.32. Doc. 241 at 8. Ryan Primerano at the Southern Center for Human Rights testified that the Center has incurred \$20,455.93 in costs for court reporting, service of subpoenas, medical records and Georgia Open Records Act requests, interpretation, shipping of documents, and gasoline and lodging for travel. Doc. 241-1 at 22. Based on that affidavit and the history of this case, the Court concludes those expenses are

³ Although the Plaintiffs request the same rate for paralegals, the Court lacks adequate evidence to conclude that \$210.00 is an appropriate rate. The affidavits also do not include sufficient information concerning the paralegals' experience for the Court to determine a reasonable local rate. Because a reasonable fee for the attorneys' work is substantially in excess of the requested \$425,000, the exclusion of paralegal hours does not affect the fee award.

⁴ Dividing the awarded \$425,000 by the number of hours, the attorneys' effective rate of compensation will be approximately \$123.65. This effective rate is further reduced by factoring in litigation expenses.

reasonable. James F. Bogan III for Kilpatrick testified that according to the firm's business records, they incurred expenses of \$10,219.39. *Id.* at 4. Because that is the only information provided, the Court cannot assess whether those expenses were reasonable. Class counsel, therefore, is entitled to recover only \$20,455.93 in litigation expenses.

Again, using the lodestar method, a combined fee and expense award substantially in excess of the requested \$425,000 would be reasonable. The Court, therefore, finds that the parties' agreement for a settlement in the amount of \$425,000 is fair and reasonable.

III. CONCLUSION

For the reasons noted, the Plaintiffs' unopposed motion for attorney's fees and expenses (Doc. 241) is **GRANTED**, and the Defendants are **ORDERED** to pay class counsel \$425,000 for reasonable attorney's fees and litigation expenses.

SO ORDERED, this ___nd day of July, 2019.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT