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United States District Court, W.D. Tennessee,
Western Division.

UNITED STATES of America, Plaintiff,
v.
STATE OF TENNESSEE, et al., Defendants.
People First of Tennessee, et al., Intervener.

No. 92-CV-2062-JPM-tmp
|
Signed 09/10/2012

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ORDER GRANTING IN PART AND DENYING IN
PART PEOPLE FIRST'S NINETEENTH
SUPPLEMENTAL APPLICATION FOR AN AWARD
OF FEES AND EXPENSES

JON P. McCALLA, CHIEF U.S. DISTRICT JUDGE

*1 Before the Court is Intervener People First of Tennessee's ("People First") Nineteenth Supplement Application for an Award of Fees and Expenses (Docket Entry ("D.E.") 2760), filed on October 26, 2011. Defendant State of Tennessee ("the State") filed a response in opposition on December 15, 2011. (D.E. 2784.) Counsel for People First, Earle J. Schwarz, filed a supplemental declaration in support of People First's application on December 28, 2011. (D.E. 2793.) Mr. Schwarz filed a second supplemental declaration supporting People First's application on January 3, 2012. (D.E. 2798.) The Court held a hearing on People First's application on January 5, 2012. (Tr. Jan. 5, 2012 (D.E. 2812).) For the reasons that follow, the Court GRANTS IN PART AND DENIES IN PART People First's application.

I. BACKGROUND

People First seeks \$807,867.50 in attorneys' fees and \$13,287.12 in costs incurred in connection with People First's Motion for Contempt (D.E. 2234) and Amended Motion for Contempt (D.E. 2291) (collectively, "the Contempt Proceedings"). (Second Supplemental Decl. of Earl J. Schwarz (D.E. 2798) ¶ 6.) In 2006, the parties to this action entered into a settlement agreement (D.E. 2174) ("the 2006 Settlement Agreement") that resolved certain disagreements concerning the State's compliance with the Court's remedial orders. In February 2008, People First filed its Motion for Contempt alleging that the State had not fulfilled its obligations under the 2006 Settlement Agreement. Specifically, People First alleged that the State reduced funding for class members' community services, impermissibly transferred services from home and community based waivers to TennCare Managed Care Organizations, and reduced eligibility for home and community based waiver services. (Mot. for Contempt (D.E. 2234) 2-4.) People First amended its contempt motion on November 10, 2008. (D.E. 2291.) The amended contempt motion focused on the State's alleged reductions in provider reimbursement, modification of eligibility requirements, and failure to develop adequate models of care for class members. (Am. Mot. for Contempt (D.E. 2291) 2-8.)

The Court set a hearing to consider People First's contempt motions. Prior to the hearing, the State filed a Motion in Limine to Exclude Testimony and Reports from the Monitor or Her Staff (D.E. 2406), in which the State argued the court monitor had aligned herself with Plaintiffs. The State later moved to remove the court monitor. (D.E. 2429.) People First opposed both of these motions. Ultimately the Court granted in part and denied in part the State's motion in limine (D.E. 2439) and denied the State's motion to remove the court monitor (D.E. 2572).

The Court held a contempt hearing on July 6, 2009, that continued through July 10, 2009. On July 13, 2009, the parties requested that the Court suspend the hearing pending the parties' settlement negotiations. (See D.E. 2467.) On September 30, 2009, the Court struck People First's contempt motions without prejudice as the parties continued settlement negotiations. (D.E. 2510.) The parties were not able to reach a comprehensive settlement agreement. (Mem. of Law in Supp. of People First's Nineteenth Supplemental Appl. for Fees and Expenses ("People First's Mem.") (D.E. 2760-3) 8.) The parties, however, moved the Court to enter two consent orders in June 2011 that allowed the State to use fine money to fund the creation of the West Tennessee Housing Foundation and the use of a new Supports Intensity Scale assessment tool. (D.E. 2711; D.E. 2712.) People First argues that these consent orders resulted from the parties' settlement negotiations regarding the contempt proceedings and represent "substantial additional relief to the Class." (People First's Mem. 17.) The State, in contrast, maintains that the consent orders "operate without reference to and irrespective of People First's contempt allegations and proceedings," and the State continues to contest People First's contempt allegations. (Defs.' Resp. in Opp'n to People First's Nineteenth Supplemental Appl. for Fees and Expenses ("Defs.' Resp.") (D.E. 2784) 10.)

*2 People First submitted its application for attorneys' fees and expenses on October 26, 2011, seeking fees and expenses for: "(1) its monitoring and enforcement work, including work on the Contempt Proceedings during the period from July 1, 2009 through November 15, 2009;(2) all time and expenses in connection with the Contempt Proceedings ...; and (3) all time warding off a series of unprincipled attacks on the Court's Monitor." (People First's Mem. 10.) The State points out that People First has already received, by the parties' agreement, \$407,299.25 in fees and expenses for the same time period as the contempt proceedings. (Defs.' Resp. 1.) The

State maintains that People First is not entitled to fees and expenses relating to the contempt proceedings because People First was unsuccessful in its contempt motions. (Id.)

II. ANALYSIS

Pursuant to 42 U.S.C. § 1988(b), in civil rights actions, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." Plaintiffs are prevailing parties for attorney's fees purposes "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Hensley v. Echerhart, 461 U.S. 424, 433 (1983). "This is a generous formulation that brings the plaintiff only across the statutory threshold. It remains for the district court to determine what fee is 'reasonable' " Id. In addition, "post-judgment monitoring of a consent decree is a compensable activity for which counsel is entitled to a reasonable a fee." Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 478 U.S. 546, 559 (1986). The Court must therefore determine (a) whether People First is a prevailing party entitled to attorney's fees, (b) whether People First is entitled to fees and expenses for its monitoring work, and (c) what fees and expenses are reasonable.

(a) Whether People First is a Prevailing Party

The "touchstone" of determining whether a plaintiff is a prevailing party "must be the material alteration of the legal relationship" of the parties. Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989). Thus, a party must achieve some relief on the merits of its claim to be deemed "prevailing." Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health and Human Res., 532 U.S. 598, 603 (2001). A defendant's voluntary change in conduct does not qualify as "relief"; rather, "judicial imprimatur" is required, such as a settlement agreement enforced through a consent decree or order. Id. at 604–05.

The Sixth Circuit has explained that "to be a prevailing party, the plaintiff must obtain a 'material' change in the legal relationship between himself and the defendant. A

material change ‘directly benefit[s]’ a plaintiff by modifying the defendant’s behavior toward him.” McQueary v. Conway, 614 F.3d 591, 598 (6th Cir. 2010) (quoting Sole v. Wyner, 551 U.S. 74, 82, 86 (2007) and Farrar v. Hobby, 506 U.S. 103, 111 (1992)).

The State argues that People First was not a prevailing party in the contempt proceedings because the Court did not sustain any of People First’s contempt allegations and did not grant any relief against the State. (Defs.’ Resp. 17.) The State maintains the consent orders entered subsequent to the contempt proceedings favor the State in so far as the orders allow the State to use funds it otherwise would have forfeited to the Court as fines. (*Id.*) Based on these results, the State concludes, People First has not achieved any material alteration in the legal relationship of the parties. (*Id.*)

The consent orders entered by the Court, however, resulted in material changes in the relationship between the State and the class members in this case. The first consent order established funding for the West Tennessee Housing Foundation, which provides low-cost housing for class members receiving supporting living services. (See Consent Order Authorizing Transfer of Fine Money Funds to Housing Foundation (D.E. 2711) 1.) The second consent order established funding for the State to adopt a new assessment tool for evaluating services needed by class members. (See Consent Order Authorizing Transfer of Fine Money to the State for Implementation of Supports Intensity Scale Assessment Tool (D.E. 2711) 1–2.) Both class member housing and service assessments were at issue in People First’s motions for contempt, and the parties reached agreement on these issues during settlement negotiations prompted by the contempt proceedings. People First’s efforts during the contempt proceedings, therefore, brought about material alterations in the parties’ relationship and the Court sanctioned these changes through its consent orders. Accordingly, the Court finds that People First was a prevailing party for attorney’s fee purposes.

***3** The State relies on the Supreme Court’s ruling in Buckhannon and the Seventh Circuit’s ruling in Alliance to End Repression v. City of Chicago, 356 F.3d 767 (7th Cir. 2004) to support its opposition to People First’s application, but this reliance is misplaced. In Buckhannon, the Supreme Court held that the plaintiff’s attorneys were not entitled to fees when the State of West Virginia voluntarily modified its offending law prior to a judicial decision. 532 U.S. at 600–02. Buckhannon involved a lawsuit that induced the defendant to

voluntarily change its practices pre-judgment. *Id.* at 601. This is distinguishable from the case at bar in which People First sought motions for contempt to enforce the Court’s remedial orders. Moreover, People First achieved what the plaintiffs in Buckhannon did not: court-ordered relief.

The Seventh Circuit’s decision in Alliance is similarly inapposite. In Alliance, the Seventh Circuit denied attorney’s fees for two contempt proceedings because the plaintiffs failed on the merits in both proceedings. 356 F.3d at 768–69. People First, in contrast, agreed to suspend the contempt proceedings to engage in settlement negotiations and those negotiations led to two consent orders. While the plaintiffs’ efforts in Alliance “bore no fruit,” *id.* at 769, People First’s efforts resulted in improved housing and assessment services for class members.

Alliance is also distinguishable in that the Seventh Circuit found that the post-judgment proceedings were separable from the original proceeding that led to the consent decree. *Id.* at 771. Here, People First’s contempt motions sought to enforce provisions of the Court’s remedial orders. The State’s compliance with the remedial orders has been an issue throughout this litigation, and the Court has modified its orders on several occasions based on the parties’ settlement agreements. People First’s work on the contempt proceedings and securing changes to class member services through the consent orders is directly related to the original proceeding in this matter. Neither the Supreme Court’s decision in Buckhannon nor the Seventh Circuit’s decision in Alliance alters the Court’s determination that People First was a prevailing party in the contempt proceedings.

During the course of the contempt proceedings, the State challenged the court monitor’s impartiality and fitness as a potential witness in the contempt hearing and as a monitor generally. People First spent significant time responding to the State’s motions to ensure that the court monitor could testify during the contempt hearing and continue to serve as the monitor in this case. People First was successful in its defense, and the Court finds that the defense of the court monitor was inextricably linked to the contempt proceedings. Accordingly, People First is entitled to reasonable fees and expenses related to that defense.

(b) Whether People First Is Entitled to Fees and Expenses for Monitoring Work

The Supreme Court has held that post-judgment monitoring of a consent decree is a compensable activity. Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 478 U.S. 546, 559-62 (1986). In Delaware Valley, the Court awarded attorney's fees for monitoring activities even though the consent decree at issue did not specifically provide for such fees. Id. at 558-59. The Court explained that compensation for monitoring work is appropriate when it ensures compliance with a court's decree and is crucial to vindicate of the plaintiffs' rights. Id. at 561. An award of fees and expenses for monitoring is well within the "zone of discretion" afforded district courts. Id.

The State argues that the Supreme Court's decision in Buckhannon renders fees for monitoring work noncompensable. As explained above, however, Buckhannon did not address attorney's fees in the context of post-judgment litigation. The Court does not read Buckhannon as overruling Delaware Valley and other courts that have examined this issue agree. See, e.g., Grier v. Goetz, 421 F. Supp. 2d 1061, 1078-79 (M.D. Tenn. 2006) (collecting cases). The State points to the Seventh Circuit's decision in Alliance to support its position, but Alliance is not binding authority on this Court. Moreover, the reasoning of Alliance is unpersuasive. As the district court in Grier notes, Alliance rests on "the naïve view that defendants will fully implement and comply with consent decrees without any monitoring by plaintiffs." Grier, 421 F. Supp. 2d. at 1078. The State's compliance with the Court's remedial orders has been a concern throughout this case. The work of People First to ensure the State's compliance, therefore, has been crucial to the vindication of class members' rights. Accordingly, People First is entitled to reasonable fees and expenses for its monitoring work.

(c) What Fees and Expenses Are Reasonable

*4 Having found that People First is entitled fees and expenses, the Court must determine what fees and expenses are "reasonable." "A reasonable fee is 'one that is adequate to attract competent counsel, but ... [does] not produce windfalls to attorneys.'" Reed v. Rhodes, 179 F.3d 453, 472 (6th Cir. 1999) (quoting Blum v. Stenson, 465 U.S. 886, 897 (1984)). The Sixth Circuit advises that "[t]he starting point for determining the amount of a

reasonable attorney fee is the 'lodestar' amount, which is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." Imwalle v. Reliance Med. Prods., Inc., 515 F.3d 531, 551 (6th Cir. 2008). The fee applicant has the burden "of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983).

1. Number of Hours Reasonably Expended

People First is seeking fees for 2291.05 hours at the rate of \$350 per hour and 58.3 hours at the rate of \$100 per hour. (Second Supplemental Decl. of Earl J. Schwarz (D.E. 2798) 2.) The State makes several objections to People First's request for fees related to the contempt proceedings. First, the State argues that documentation is inadequate for 425.5 hours claimed by People First. (Defs.' Resp. 29.) The State attached as Exhibit 7 to its Response a spreadsheet of the hours to which it objects. (D.E. 2784-7.) The Court has reviewed the documentation for these hours and finds that the documentation is of sufficient detail and probative value to enable the Court to determine with a high degree of certainty that the hours were actually and reasonably expended in the prosecution of the litigation. Imwalle, 515 F.3d at 553. The billing records are itemized and specify for each entry the date that the time was billed, the individual who billed the time, the fractional hours billed, and the specific task completed. See id. at 553. Admittedly, some of the descriptions are brief, but "explicitly detailed descriptions are not required." Id. at 554. People First has met its burden of demonstrating that the hours claimed were actually expended in the prosecution this case.

Second, the State objects to 234.6 hours for time spent responding to a motion to compel People First to comply with reasonable discovery requests relating to People First's communications with the Court monitor. (Defs.' Resp. 34.) People First was unsuccessful in its opposition to the motion and was ordered to produce the communications at issue. The Court agrees with the State that these fees should be disallowed since People First's objections proved unavailing. Accordingly, the Court will exclude these hours from its fee calculation.

Third, the State objects to four hours for time spent on non-attorney functions and time responding to the State's

successful motion in limine. (*Id.* at 35.) After reviewing the documentation for these hours, the Court agrees that the fee requests are inappropriate and will exclude the hours from its fee calculation.

Fourth, the State points out that People First seeks payment for 163.8 hours for time spent traveling at the same hourly rate as regular attorney work. In previous fee applications, People First has accepted a fifty-percent reduction in the hourly rate for travelling time. Such a reduction is consistent with Sixth Circuit precedent. *See Wayne v. Village of Sebring*, 36 F.3d 517, 533 (6th Cir. 1994). The Court will therefore reduce the hourly rate applied to these hours by fifty percent.

Fifth, the State argues that People First's fee application contains many duplicate entries and requests that the Court reduce People First's award by twenty-five percent. (Defs.' Resp. 35–36.) People First acknowledged and subtracted several duplicate entries when it supplemented its application. The State claims an across-the-board reduction is nonetheless justified because "there are hours claimed by multiple counsel for the same activities." (*Id.* at 35.) There is nothing suspect, however, about multiple attorneys working on the same task in preparing and reviewing court documents or attending meetings. Having reviewed the entries to which the State objects, the Court does not believe an across-the-board reduction is appropriate.

*5 The State makes multiple objections to the hours claimed by People First relating to People First's monitoring activities. As explained above, People First is entitled to reasonable fees for its monitoring work. The State argues that there is insufficient documentation for 88.95 hours claimed by People First. The Court disagrees. Having reviewed the documentation for People First's monitoring activities, the Court finds that it meets the standards previously discussed for billing records. Regarding the State's other objections relating to People First's monitoring efforts, People First is entitled to compensation for time spent addressing issues involving individual class members and reviewing rules promulgated by the State affecting the class. These tasks are among the responsibilities of the attorneys as class counsel and are recoverable.

Based on the State's objections, the Court will reduce the number of hours sought by People First by a total of 238.6. Of these hours, six are sought at a rate of \$100 per hour and 232.6 are sought at the rate of \$350 per hour. As a result, the Court will award 52.3 hours at a rate of \$100

per hour and 2058.45 hours (of which 163.8 are travel hours) at the rates discussed below.

2. The Hourly Rate

The State objects to People First's requested hourly rate of \$350.¹ (Defs.' Resp. 31.) The Sixth Circuit cautions that "hourly rates for fee awards should not exceed the market rates necessary to encourage competent lawyers to undertake the representation in question." *Coulter v. Tennessee*, 805 F.2d 146, 149 (6th Cir. 1986). The State points out that counsel for People First has already accepted payment at rates of \$265 and \$275 per hour for work performed in this case during the same time period at issue. Thus, the State concludes, "the actual hourly rate necessary to encourage competent attorneys to undertake representation in this matter can be no more than \$265 per hour for activities prior to August 31, 2008 and \$275 for activities after August 31, 2008." (Defs.' Resp. 31.) Counsel for People First argue that they should not be bound by the rates that they negotiated with the State in prior settlement agreements in this matter. People First's attorneys, however, are entitled only to fee awards necessary to encourage competent lawyers to undertake representation in this case. The fact that People First's attorneys accepted rates of \$265 per hour and \$275 per hour for work during the same time period at issue is compelling evidence that the hourly rates necessary to encourage competent lawyers to represent People First is \$265 per hour and \$275 per hour. Accordingly, the Court will apply a rate of \$265 per hour for activities prior to August 31, 2008, and \$275 per hour for activities after August 31, 2008. As explained above, the Court will reduce the hourly rate by fifty percent for hours spent traveling.

3. Lodestar Amount

Taking all of the above considerations into account, the Court calculates the "lodestar amount" as follows:

52.3 hours at \$100 per hour: \$5230

113 hours (travel hours before August 31, 2008) at \$132.50: \$14,972.5

50.8 hours (travel hours after August 31, 2008) at \$137.50: \$6985

324.2 hours (hours before August 31, 2008)² at \$265: \$85,913

1568.45 hours (hours after August 31, 2008)³ at \$275: \$431,323.75

Lodestar Total: \$544,424.25

Having calculated the lodestar, the Court must decide whether to reduce the amount because People First only achieved partial success in the contempt proceedings. The consent orders that resulted from the contempt proceedings did not address all of the issues presented by People First in its contempt motions. The orders, however, resulted in significant benefits to the class members. In addition, People First was successful in its defense of the court monitor, which resulted in her continued presence in this litigation. Lastly, the Court excluded from its calculation hours expended by People First on unsuccessful matters related to the contempt proceedings. For these reasons, the Court declines to reduce the lodestar amount. Accordingly, the Court awards People First \$544,424.25 in attorneys' fees.

4. Expenses

*6 People First seeks \$13,287.12 in expenses. In civil rights cases, a court may award expenses incurred for attorneys to render their services and that would ordinarily be charged to a fee-paying client. Cleveland Area Bd. of Realtors v. City of Euclid, 965 F. Supp. 1017, 1023 (N.D. Ohio 1997). The expenses must be reasonable. Id. The State objects to People First's expense requests as unreasonable and insufficiently documented. (Defs.' Resp. 38.) The Court, however, has reviewed People First's requests and is satisfied that they are reasonable. In addition, People First has provided adequate explanations for the expense requests in its supplements. Accordingly, the Court awards People First \$13,287.12 in expenses.

III. CONCLUSION

For the above reasons, People First's application is GRANTED IN PART AND DENIED IN PART. The Court awards People First \$544,424.25 in attorneys' fees and \$13,287.12 in expenses.

IT IS SO ORDERED this 10th day of September, 2012.

All Citations

Not Reported in Fed. Supp., 2012 WL 12831459

Footnotes

¹ The State did not raise an objection to the \$100 hourly rate.

² People First requested 538.6 hours for work done prior to August 31, 2008. (See D.E. 2798–1.) The Court subtracted the travel hours (113) (See Defs.' Resp. Ex. 10 (D.E. 2784–10)) and the hours (101.4) the Court determined should be excluded based on the State's objections for work done prior to August 31, 2008 (See Defs.' Resp. Ex. 8 (D.E. 2794–8)).

³ People First requested 1752.45 hours for work done after August 31, 2008. (See D.E. 2798–1.) The Court subtracted the travel hours (50.8) (See Defs.' Resp. Ex. 10 (D.E. 2784–10)) and the hours (133.2) the Court determined should be excluded based on the State's objections for work done after to August 31, 2008 (See Defs.' Resp. Ex. 8 (D.E. 2784–8)).

