

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Walter Barry *et al.*,

Plaintiffs,

Case No. 13-cv-13185

v.

Judith E. Levy

United States District Judge

Nick Lyon,

Mag. Judge David R. Grand

Defendant.

_____ /

**OPINION AND ORDER GRANTING JOINT MOTION FOR
ATTORNEY FEES AND COSTS [215]**

The Court previously determined that counsel for plaintiffs in this class action are entitled to reasonable attorney's fees and costs under 42 U.S.C. § 1988, and permitted the parties time to negotiate and come to a mutually agreed-on amount. (Dkts. 91, 212, 213.) On February 24, 2017, the parties filed a joint motion for attorney's fees and costs, requesting that the Court award class counsel a total of \$910,908.83 for costs and services from 2013 through January 18, 2017, with further payments to be made on a periodic basis for additional activities as set forth in the motion. (See Dkt. 215.)

This number included awards to the specific attorneys and their organizations as follows:

| Attorney/ Law Student | Hourly Rate Negotiated | Hours Sought By Plaintiff | Hours Negotiated | Total Negotiated |
|----------------------------------|---------------------------------------|--|-----------------------------|-----------------------------|
| J. Doig | \$425 | 1441.3 | 1347.6 | \$ 572,730.00 |
| M. Aukerman | \$425 | 688.25 | 658.99 | \$ 280,070.75 |
| E. Nichols | \$276 | 114.1 | 103.68 | \$ 28,615.68 |
| K. Linehan | \$205 | 8.7 | 8.7 | \$ 1783.50 |
| S. Nelson | \$189 | 21 | 19.53 | \$ 3691.17 |
| D. Ziegler | \$125 | 68.5 | 62.52 | \$ 7815.00 |
| A. Freed | \$125 | 104.5 | 94.05 | \$ 11,756.25 |
| Total | | 2446.35 | 2295.07 | \$ 906,462.35 |

(Dkt. 215 at 2.) The following includes plaintiffs' costs:

| | Fees | Costs | Total |
|--------------|---------------|--------------|---------------|
| CCJ | \$ 603,129.18 | \$ 1567.25 | \$ 604,696.43 |
| ACLU | \$ 303,333.17 | \$ 2879.23 | \$ 306,212.40 |
| Total | \$ 906,462.35 | \$ 4446.48 | \$ 910,908.83 |

(Dkt. 215 at 3.) The Court previously granted the parties' joint motion for notice to the class members regarding the attorney's fees and costs request (Dkt. 217), and no class members filed any objection. (See Dkts. 219, 220.)

In a certified class action, the Court has discretion to award reasonable attorney's fees and non-taxable costs that are authorized by the parties' agreement. Fed. R. Civ. P. 23(h). And under § 1988, the prevailing party "should ordinarily recover an attorney's fee." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). Such an award must be fair and "reasonable under the circumstances." *See Moulton v. United States Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009) (quotations omitted). To make this determination, the Court generally considers a number of factors, *id.*, and the Court must make a determination as to reasonableness even "in the absence of objections." *See Fed. R. Civ. P. 23* (advisory committee notes to 2003 amendments regarding subdivision (h)).

The "most critical factor is the degree of success obtained. . . . Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686,703 (6th Cir. 2016) (citation omitted). "A court should compensate the plaintiff for the time his attorney reasonably spent in achieving the favorable outcome." *Hescott v. City of Saginaw*, 757 F.3d 518, 526 (6th Cir. 2014) (quotation omitted).

Here, as the parties agree, the results achieved for the class “were excellent.” (*See* Dkt. 215 at 11.) Plaintiffs’ counsel certified the class and subclass, found that defendant’s “criminal justice disqualification” and “fleeing felon” policy and practices violated the Constitution and federal law, and permanently enjoined those policies and practices. (*Id.* at 11-12.) Moreover, plaintiffs’ counsel, defendant’s counsel, and the federal government all worked together to provide class members with \$60 million in retroactive food assistance benefits; that number continues to grow as of this date. (*Id.* at 12.) And this is only a highlight of the numerous benefits the class received. (*See id.*)

To determine whether the agreed on fee is reasonable, the Court uses the “lodestar” method—multiplying a reasonable hourly rate by the proven number of hours reasonably expended on the case by counsel. *Bldg. Serv. Local 47 Cleaning Contractors Pension Plan v. Grandview Raceway*, 46 F.3d 1392, 1401 (6th Cir. 1995) (citing *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 563 (1986)). First, the lodestar must be calculated for each attorney involved. *See Del. Valley Citizens’ Council for Clean Air*, 478 U.S. at 563. Second, the Court may, “within limits, adjust the ‘lodestar’

to reflect relevant considerations peculiar to the subject litigation.” *See Adcock-Ladd v. Sec’y of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000) (citing *Reed*, 179 F.3d at 471-72).

A reasonable hourly rate is generally calculated according to the “prevailing market rates in the relevant community.” *See Blum v. Stenson*, 465 U.S. 886, 895 (1984). The “relevant community” here is the Eastern District of Michigan. *See Adcock-Ladd*, 227 F.3d at 350 (relevant community is the legal community within the court’s territorial jurisdiction). And the “‘prevailing market rate’ is that rate which lawyers of comparable skill and experience can expect to command” in the relevant community. *See id.* “The appropriate rate . . . is not necessarily the exact value sought by a particular firm, but is rather the market rate in the venue sufficient to encourage competent representation.” *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 618 (6th Cir. 2007).

The parties agree that attorneys Doig and Aukerman should be compensated at a rate of \$425-per-hour, which is reasonable and thus adopted. Doig, who recently retired, had been practicing law since 1981 and worked at the Center for Civil Justice at the time of this litigation.

(Dkt. 215-2 at 6.) During that time, she won many meaningful judgments and settlements as class counsel on behalf of individuals wrongfully denied subsistence benefits. (*Id.* at 5-6.) Aukerman graduated *summa cum laude* from New York University School of Law in 2000, clerked for a judge on the U.S. Court of Appeals for the Second Circuit, then began practicing for Legal Aid of Western Michigan. (Dkt. 215-3 at 2-3.) She worked at the ACLU during the time of this litigation, and has also won many meaningful judgments and settlements for her clients. (*Id.* at 3-5.) The agreed-on rate of \$425-per-hour is below the 95th percentile for attorneys of similar experience, and attorneys such as these two could undoubtedly command such rates given their skills and experience. See STATE BAR OF MICHIGAN, ECONOMICS OF LAW PRACTICE 6-7 (2014), <http://www.michbar.org/file/pmrc/articles/0000151.pdf>.

The parties agree that attorney Nichols, who currently works as a Fair Housing Attorney for Legal Services of Eastern Michigan, should be compensated at a rate of \$276-per-hour, which is reasonable and thus adopted. Nichols has been licensed to practice law since 2000, and worked as a staff attorney on this matter at the Center for Civil Justice.

(Dkt. 215-4 at 23.) The agreed-on rate of \$276-per-hour is below the mean for attorneys with at least sixteen years of experience in this district. See STATE BAR OF MICHIGAN, ECONOMICS OF LAW PRACTICE 6 (2014), <http://www.michbar.org/file/pmrc/articles/0000151.pdf>.

The parties agree that attorney Linehan, who currently works at the U.S. Equal Employment Opportunity Commission, should be compensated at a rate of \$205-per-hour, which is reasonable and thus adopted. Linehan has been licensed to practice law since 2012, and worked as a staff attorney on this matter at the Center for Civil Justice.

(Dkt. 215-5 at 23.) The agreed-on rate of \$205-per-hour is the mean for attorneys with three to five years of experience in this district, which is reasonable here. See STATE BAR OF MICHIGAN, ECONOMICS OF LAW PRACTICE 6 (2014), <http://www.michbar.org/file/pmrc/articles/0000151.pdf>.

The parties agree that attorney Nelson, who is currently an assistant defender at the State Appellate Defender Office, should be compensated at a rate of \$189-per-hour, which is reasonable and thus adopted. Nelson has been licensed to practice law since 2013, and was a Skadden Fellowship recipient working at the ACLU at the time of this

litigation. (Dkt. 215-6 at 23.) The agreed-on rate of \$189-per-hour is the mean for attorneys with one to two years of experience in this district, which is reasonable here. See STATE BAR OF MICHIGAN, ECONOMICS OF LAW PRACTICE 6 (2014), <http://www.michbar.org/file/pmrc/articles/0000151.pdf>.

The parties agree that attorneys Ziegler and Freed, who were law students working as summer law clerks at the ACLU at the time of they contributed to this litigation, should be compensated at a rate of \$125-per-hour, which is reasonable and thus adopted. The agreed-on rate of \$125-per-hour is a reasonable rate for work performed by paralegals and law clerks in this district. See, e.g., *Schleben v. Carpenters Pension Tr. Fund-Detroit & Vicinity*, No. 13-cv-14464, 2016 U.S. Dist. LEXIS 25907, at *28 (E.D. Mich. Mar. 2, 2016) (“Finally, the Court finds that a rate of \$125 per hour is reasonable for the paralegal’s work.”).

And as the parties’ expert opined, the number of hours expended by each attorney and law clerk “is reasonable in light of the complexity of the case and the fact that the Michigan Attorney General’s office presented a vigorous defense.” (Dkt. 215 at 15-16 (citing Dkt. 215-9).)

The Court reviewed the thousands of pages of briefing in this case, and presided over numerous hearings, status conferences, and telephonic calls. This class action raised complex issues of constitutional, statutory, and class-certification law. And the parties litigated this case through appeal on a variety of issues. The Court is satisfied by the briefing and affidavits that appropriate steps were taken to exclude hours expended on clerical tasks. (*See id.*; *see, e.g.*, Dkt. 215-9 at 12.) The number of hours expended by each attorney and law clerk is reasonable, and of the type of work that fee-paying clients would normally be charged.

It is also worth highlighting, as noted by the parties, that the award represents less than 2% of the benefits that plaintiffs' counsel was able to obtain in back benefits already paid out to the class alone, which does not itself encompass the full relief obtained. (*See* Dkt. 215 at 13.) A reasonable fee in a case such as this likely could have been much higher. But the Court is satisfied that the amount, which is the result of good faith negotiations among the many attorneys that invested time in this case, is a fair and reasonable award of attorney's

fees and costs. Accordingly, the parties' joint motion (Dkt. 215) is GRANTED.

IT IS SO ORDERED.

Dated: May 31, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 31, 2017.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager