IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ARTHUR DOE, et al. **PLAINTIFFS**

VS. **CIVIL ACTION NO. 3:16-cv-789-CWR-FKB**

LYNN FITCH, Attorney General of the State Of Mississippi, et al. **DEFENDANTS**

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS

Before this Court is Plaintiffs' request to tax the State of Mississippi and its taxpayers with $427,287.25 in attorneys' fees and $11,318.83 in expenses incurred by Plaintiffs' attorneys. The ultimate aim of this lawsuit was to have Mississippi's unnatural intercourse statute declared facially unconstitutional and to effectuate the removal of all sex offenders on the Mississippi Sex Offender Registry (MSOR) because of unnatural intercourse or sodomy convictions. That aim was not achieved. Instead, Plaintiffs obtained only partial relief: the removal of slightly more than 20 persons convicted of soliciting oral or anal sex in Louisiana from the MSOR. Even though they only obtained limited relief, Plaintiffs seek to require the State of Mississippi to pay for virtually all of the hours their attorneys expended pursuing their unsuccessful claim. The fee award sought by Plaintiffs must be substantially reduced to account for the scope of the relief ordered by the Court.

In addition to, and in the alternative, the total award sought to be taxed against State Defendants is excessive, and both the hours claimed and the hourly rates sought are unreasonable under the circumstances. The fee applicant has the burden of demonstrating the reasonable and productive nature of hours expended through detailed time entries and of seeking an hourly rate which is within the prevailing market range of rates for the district in which the litigation took

place, and plaintiffs have failed to meet that burden. Moreover, Defendants object to nearly all expenses sought as set forth below.

ARGUMENT

"Our legal system generally requires each party to bear his own litigation expenses, including attorney's fees, regardless whether he wins or loses." *Fox v. Vice*, 563 U.S. 826, 832 (2011). But Congress has enacted legislation that authorizes "courts to deviate from this background rule in certain types of cases by shifting fees from one party to another." *Id.* (citation omitted). The fee-shifting statute pursuant to which the CANS Plaintiffs filed the instant motion, 42 U.S.C. § 1988(b), "allows the award of 'a reasonable attorney's fee' to 'the prevailing party' in various kinds of civil rights cases, including suits brought under § 1983." *Id.* Defendants do not dispute that the CANS Plaintiffs are prevailing parties. However, Defendants do dispute the reasonableness of the CANS Plaintiffs' fee application in light of the limited success they achieved in this case without having to file a dispositive motion, go to trial, or litigate an appeal.

Fee-shifting statutes, such as 42 U.S.C. § 1988, "were not designed as a form of economic relief to improve the financial lot of attorneys." *Pennsylvania v. Delaware Citizens Council*, 478 U.S. 546, 565, 92 L.Ed.2d 456 (1986)). "An award of attorneys' fees is to be used as an incentive for the private enforcement of constitutional rights, and not as a shill for the imposition of punitive damages." *Leroy v. City of Houston*, 831 F.2d 576, 585 ("*Leroy IV*" (5th Cir. 1987) (citation omitted). In other words, "a reasonable attorney's fee is one that is adequate to attract competent counsel, but that does not produce windfalls to attorneys." *Leroy v. City of Houston*, 906 F.2d 1068, 1078-79 ("*Leroy V*") (5th Cir. 1990) (internal quotation marks, alterations, and citation omitted). It is a well settled that "[f]ee awards are to be reasonable, reasonable as to billing rates and reasonable as

to the number of hours spent in advancing the successful claims." *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989). The fee award sought by the CANS plaintiffs' seven lawyers is excessive and patently unreasonable, both as to hours and hourly rates. To award anywhere near the amount Plaintiffs are requesting would confer an unjustified windfall on their attorney at the expense of the taxpayers of the State of Mississippi.

As the Court is aware, the determination of reasonable attorneys' fees under § 1988 involves the calculation of the lodestar, *see, e.g.*, *LULAC v. Roscoe ISD*, 119 F.3d 1228, 1232 (5th Cir. 1997); *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993), and the burden of demonstrating the reasonableness of a fee request falls squarely upon the fee applicant. *E.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Saizan v. Delta Concrete Prods. Co., Inc.*, 448 F.3d 795, 799 (5th Cir. 2006). Calculating the lodestar involves a three-step process. The first step is to ascertain the nature and extent of hours reasonably expended on the litigation by the prevailing party's attorneys. *E.g.*, *Depriest v. Walnut Grove Corr. Auth.*, 2017 WL 4228751, at *4 (S.D. Miss. Sept. 22, 2017). Plaintiffs are required to submit "evidence supporting the hours worked . . . and establish[] that such hours are reasonable." *Id.* (internal quotation marks and citations omitted). "That evidence must reflect 'billing judgment,' which 'refers to the usual practice of law firms in writing off unproductive, excessive, or redundant hours.'" *Id.* (quoting *Walker v. U.S. Dep't of Hous. & Urban Dev.*, 99 F.3d 761, 769 (5th Cir. 1996). A district court is obligated to review and scrutinize the reasonableness of the hours claimed even where no objection to specific hours is made. *See Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 551 (5th Cir. 1987).

In the second step, the court must value the services to determine a reasonable hourly rate based upon the prevailing market rates for the type of litigation in the relevant district where the litigation occurred. *Blum v. Stenson*, 465 U.S. 886, 893-95 (1984); *Hopwood v. State of Texas*, 236 F.3d 256, 281 (5th Cir. 2000). The product of this calculation yields the "lodestar," which the Supreme Court has observed that "normally provides a reasonable attorney's fee within the meaning of [section 1988]." *Blum*, 465 U.S. at 897 (internal quotation marks and citation omitted). The third and final step is to determine whether the lodestar product should be adjusted on the basis of the *Johnson* factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974). *See, e.g.*, *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998). Although the "lodestar is presumed reasonable, it may be adjusted where it 'does not adequately take into account a factor that may be properly considered in determining a reasonable fee.'" *Combs v. City of Huntington*, 829 F.3d 388, 394 (5th Cir. 2016) (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010)). The Supreme Court has emphasized "that 'the most critical factor' in determining a reasonable fee 'is the degree of success obtained.'" *Id.* (quoting *Hensley*, 461 U.S. at 436). Therefore, "courts must consider the plaintiff's degree of success to determine whether the lodestar is excessive." *Id.* (citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)).

I. Plaintiffs' Attorneys Seek to Be Compensated For Hours Not Reasonably Expended

Plaintiffs seek an award of $427,287.25 in attorneys' fees for 1,089.4 hours billed by seven attorneys and a "Senior Legal Worker" over the course of this litigation, including the fee application. Defendants object to the overall reasonableness of the hours claimed by multiple counsel and have also noted specific objections to the hours claimed by plaintiffs' attorneys on their timesheets submitted in support of the fee application. For the Court's convenience in

review, those objections are noted directly on each timekeepers' billing records by a code indicating the category of objection for the hours which Defendants submit should be disallowed or substantially reduced. Those categories of objections are as follows:

- E--Excessive Time for Task Performed;
- V--Vague Time Entries Lacking Explanatory Detail;
- D--Duplicative Hours for Multiple Counsel;
- C--Conferences, Meetings, or Telephone Conversations;
- NR--Not Related to Successful Claim on Behalf of CANS Plaintiffs
- NS--Not Successful on a Discrete Issue;
- P--Paralegal or Clerical Work Performed by Attorney; and
- A--Work On Attorney Fee Application.

The legal authority for these objections, and illustrative cases, are set forth briefly below. The State Defendants have sought only to summarize notable objections. These summaries are illustrative, not exclusive, and the Defendants would refer the Court to their more specific objections to the hours expended by Plaintiffs' attorneys set forth in Exhibit A, which is attached hereto.

Given the voluminous billing records submitted in support of the fee application, as well as the sheer number of duplicative and impermissibly vague time entries, Defendants suggest that the Court should reduce the toral number of hours each timekeeper spent litigating the case by a substantial percentage. When faced with an attorney who has failed to exercise billing judgment, courts routinely impose across-the-board reductions to the time claimed in a fee application, instead of conducting a line-by-line analysis of the attorney's billing records. *See*

Hopwood, 236 F.3d at 279 (affirming "25 percent summary reduction based on the inadequacy of the time entries, duplicative work product, and lack of billing judgment of their counsels' submitted hourly totals"); *Walker*, 99 F.3d at 770 ("The proper remedy when there is no evidence of billing judgment is to reduce the hours awarded by a percentage intended to substitute for the exercise of billing judgment."); *Mississippi State Chapter Operation Push v. Mabus*, 788 F. Supp. 1406, 1417-18 (N.D. Miss. 1992) ((reducing attorneys' claimed hours by 55% and 65% for duplicative, excessive, and insufficiently documented time); *Watkins v. Fordice*, 807 F. Supp. 406, 414 (S.D. Miss. 1992) (reducing each attorney's claimed time by 50% for duplicative and excessive hours). Based on the Plaintiffs' attorneys' failure to use proper billing judgment, as shown below, Defendants submit that all hours claimed by them should be reduced by 65%.

A. Hours Expended That Were Not Related to the Claim on Which the CANS Plaintiffs Succeeded ("NR").

Plaintiffs claim they have exercised billing judgment by reducing the total number of hours expended by the CCR timekeepers by 10%. However, this only amounts to a reduction of $28,760.25. That is insufficient. To exercise proper billing judgment, an attorney must "wr[i]te off any excessive, redundant, or unproductive hours." *Walker*, 99 F.3d at 769. Specifically, the party seeking the award must show all hours actually expended on the case but not included in the fee application. The hours excluded from the fee request should be reflected in the billing records submitted to the court. *See Leroy IV*, 831 F.2d at 586, n. 15 ("Despite making repeated findings that the attorneys exercised billing judgment in this case, the billing records are completely devoid of any hours written off.").

In this case, Plaintiffs asserted two claims: (1) that Mississippi's unnatural intercourse statute is facially unconstitutional under *Lawrence v. Texas*, and therefore the requirement that any Mississippi resident convicted of unnatural intercourse in Mississippi (or an equivalent crime in another State) register with the MSOR violates their Fourteenth Amendment due process rights; and (2) that requiring Mississippi residents with Louisiana CANS convictions to register as sex offenders violates their equal protection rights because residents convicted of prostitution are not required to register. Throughout most of this case, the primary focus of Plaintiffs was their due process/*Lawrence* claim. Indeed, Plaintiffs' attorneys' timesheets show that they devoted a significant portion of their time to this issue, even going so far as to speak with Erwin Chemerinsky about submitting an amicus brief. *See*, *e.g.*, [Doc. 154-2 at 24-26, 47; Doc. 154-3 at 8, 11]. Moreover, Plaintiffs filed a motion for summary judgment and a motion for class certification asking this Court to strike down Mississippi's unnatural intercourse statute and order Defendants to remove all sex offenders from the MSOR who were being required to register because of an unnatural intercourse conviction or an equivalent out-of-state conviction. [Docs. 15, 20].

And yet, Plaintiffs are seeking compensation for nearly all of the excessive number of hours they spent pursuing this unsuccessful claim. The Supreme Court has explained that, when a lawsuit presents "claims for relief that are based on different facts and legal theories," § 1988 mandates that "unrelated claims be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim." *Hensley*, 461 U.S. at 434. Plaintiffs' *Lawrence* claim is based on a much different and a much more radical legal theory than their equal protection claim. If Plaintiffs had obtained class certification and

succeeded on their facial *Lawrence* claim, a significant number of sexual predators convicted of forcible sodomy or sodomy with minors would have been eligible to be removed from the MSOR. [*See* Doc. 92 at 19-23, Defs' Memo. in supp. of MSJ]. Because Plaintiffs were not successful on that much broader, unrelated claim, any hours their attorneys worked litigating, researching, and discussing that claim were not reasonably expended.

Further, months in advance of the filing of the complaint, Plaintiffs' counsel spent a substantial amount of time researching, drafting, and revising a preliminary injunction that was never filed. [Doc. 154-2 at 22-25]. Their refusal to write off all of these unnecessary and unproductive hours conclusively demonstrates that they have failed to use billing judgment. Accordingly, the Court should disallow all of these hours and substantially reduce all other hours for which there is no indication in the billing records that they were related to the relief obtained.

B. Not Successful Result on Discrete Issue ("NS").

As discussed above, where a plaintiff has achieved only a partial success with regard to the relief sought in a suit, the identifiable time expended on matters that did not contribute to the favorable result should be excluded as non-compensable. *See Johnston v. Lucas*, 1985 WL 6136, at *1 (N.D. Miss. Jan. 25, 1985) (holding that time spent on preparing and filing a motion to amend plaintiff's complaint that was denied should be disallowed). Indeed, "[w]hen using the lodestar method to award attorney fees, courts routinely deduct time spent on unsuccessful, unfounded or unnecessary pleadings, motions, discovery requests and memoranda." *White v. Imperial Adjustment Corp.*, 2005 WL 1578810, at *11 (E.D. La. June 28, 2005); *see also Abner v. Kansas City S. Ry. Co*., 2007 WL 1805782, at *5-6 (W.D. La. June 21, 2007), *aff'd*, 541 F.3d 372 (5th Cir. 2008) ("Because the hours billed must have been for time reasonably spent on work

in furtherance of claims on which the plaintiffs prevailed, *see Von Clark v. Butler*, 916 F.2d 255, 259 (5th Cir. 1990), the plaintiffs can be awarded no fees for the time and effort expended on the motion for injunctive and declaratory relief, as such motion was denied.").

Defendants specifically object to Plaintiffs' attorneys being compensated for hours worked on researching, drafting, revising, and editing the motion for summary judgment [Doc. 15] and the motion for class certification [Doc. 20]. Plaintiffs filed these motions a day after Defendants filed their answer, well in advance the case management conference. Further, they filed these motions without providing any information to Defendants or defense counsel that could be used to confirm their identities. Instead, Plaintiffs attached a redacted declaration executed by one of their attorneys, to which were attached copies of documents that purported to relate to the named Plaintiffs, but which were heavily redacted so as to remove any identifying information. [*See* Doc. 17, Doc. 17-1 through 17-5]. Given Defendants' obvious inability to respond to the prematurely filed motions without discovery, the Court rightfully denied the motions and allowed the parties to engage in discovery. [Doc. 44]. What is more, the CANS plaintiffs were able to obtain their requested relief without filing another motion for summary judgment or obtaining class certification. Simply put, the numerous hours Plaintiffs' counsel expended on these motions proved to be wholly unproductive. Therefore, they should not be compensated.

C. Conferences, Meetings or Telephone Conversations ("C").

Time expended upon excessive conferences between multiple co-counsel or between counsel and clients should be disallowed or reduced along with other non-efficient or duplicative expenditures of time. *See PUSH*, 788 *F. Supp.* at 1417 (district court substantially reduced hours

where seven attorneys "engaged in a plethora of undefined or simply denoted 'strategy' conferences, telephone or otherwise" and time entries were "void of even the slightest description or clue as to what these calls were about"); *see also Hopwood v. State of Texas*, 999 F. Supp. 872, 915 (W.D. Tex. 1998) *rev'd in part sub nom. on other grounds*, *Hopwood*, 236 F.3d 256 (deleting as wasteful hours claimed by multiple counsel in "unproductive attorney and client conferences"); *Curtis v. Bill Hanna Ford*, 822 F.2d 549 (5th Cir. 1987) (disallowing time of lead counsel in conferences with law professor).

> Generally, attorneys should work independently without the incessant "conferring" that so often forms a major part of the fee petition "in all but the tiniest cases."

PUSH, 788 F. Supp at 1418 (quoting *In Re Continental Illinois Securities Litigation*, 572 F. Supp. 931, 933 (N.D. Ill. 1983)).

Excessive and unnecessary communication between counsel, in person, over the telephone, and via e-mail, may be the single most abused time entry by the CANS Plaintiffs' attorneys in this case. Just as an example, although Ms. Schwartz is lead counsel of record for Plaintiffs, a sizeable portion of her claimed hours involved talking with co-counsel about the case. Many of the time entries are exceedingly vague and provide no basis for the Court to find that these hours were reasonably expended. *See* [Doc. 154-2 at 24] entries for February 29 & March 1, 2016. Of course, each attorney to whom Ms. Schwartz spoke also made time entries relating to those conversations and now seeks reimbursement in fees for this excessive communication between co-counsel. While Defendants acknowledge that communication between attorneys working on the same case is important, the amount of conference calls,

meetings, and correspondence between Plaintiffs' attorneys reflected on their timesheets is unreasonable and duplicative.

D. Vague Time Entries Lacking Explanatory Detail ("V").

The fee applicant bears the burden of maintaining billing records which adequately document and describe the productive and necessary nature of the legal work performed, *Watkins*, 7 F.3d at 457; indeed, the existence of sufficiently detailed time entries is a prerequisite to a "meaningful review" by the Court as to exactly what services and work product were performed and their reasonableness. *Louisiana Power and Light Co. v. Kellstrom*, 50 F.3d 319, 324-26, n.11 (5th Cir. 1995); *PUSH*, 788 F. Supp. at 1415-1416 (hours should be disallowed or reduced when "the court cannot tell from the submission exactly what services were performed"). The Fifth Circuit has "time and time again . . . admonished attorneys . . . to keep careful time records so that the court may determine if the hours submitted are reasonable." *Watkins*, 7 F.3d at 458 (quoting *Von Clark*, 916 F.2d at 260. Hours claimed based on time entries that are vague or lacking in explanatory detail as to the beneficial nature of the time expended must be disallowed or substantially reduced.[1] *Kellstrom*, 50 F.3d at 326; *Leroy IV*, 831 F.2d at 585.

In this regard, time entries which fail to specify the exact work product produced or fail to describe the exact legal tasks performed, such as "research case law," "discussions with counsel," "conference with co-counsel," "preparing case materials," etc., are vague and

[1]Indeed, in PUSH, where many time billing entries were "amorphous" and contained "inadequate descriptions," the district court observed that "[w]here the documentation is inadequate . . . the district court would do violence to its judicial obligations were it to accept the amounts claimed at their value." 788 F.Supp. at 1416 (internal quotations marks and citations omitted).

insufficient. *See Kellstrom*, 50 F.3d at 326 n.11 (time entries such as "legal research," "met with client," "revise memorandum," and "review pleadings" are vague and lack required specificity); *Hopwood*, 999 F.Supp. at 915 and n. 93 (time entries such as "review and revise brief," "legal research re 5th Circuit issues," and "TC w/Mr. Rosman" are "simply too vague and brief to inform the Court precisely what work was done"); *PUSH*, 788 F. Supp. at 1417-1418 & n. 27 (time entries for "meeting [with counsel] re strategy," "investigation" and "conference with co-counsel" lacked necessary detail and explanation); *Martin v. Mabus*, 734 F. Supp. 1216, 1228 (S.D. Miss. 1990) (time entries such as "phone call to Rhodes," or "prepared for case" held insufficient).

The timesheets submitted in support of the fee request are generally characterized by a lack of explanatory detail. To take just one example, Ms. Schwartz recorded the following time entries over a three-day period from December 5-7, 2017: "Call with AA re underlying conviction"; "Correspondence re discovery process, experts"; "Call with A Doe"; "Scheduling and draft responses"; "Call with team re next steps in discovery"; and "Calls with E Doe C Doe, message for D Doe, A Doe." [Doc. 154-2 at 39]. Simply stated, without sufficient explanatory detail, neither the Court nor Defendants can surmise the exact nature of many of the hours claimed by Plaintiffs' counsel or determine whether the task was necessary and productive or a waste of time. The requirement that sufficiently detailed time records be maintained is important in cases which, as in the instant litigation, involve multiple attorneys. The lack of detail manifested by a number of the entries here directly hampers the ability of Defendants to object to certain entries on substantive grounds.[2] Obviously, without an adequate description of what was

[2]Accordingly, where the "V" objection for lack of explanatory detail or block time appears, other

actually done, it cannot be determined whether the service was necessary or reasonable. The Plaintiffs' attorneys had the sole ability to precisely describe and detail the productive nature of the time they expended in this case, and they should not benefit from utilizing vague time entries which can be understood neither by the Court nor the State Defendants.

E. Duplication of Effort by Multiple Counsel ("D").

Where multiple counsel are involved in a case, the district court must particularly scrutinize the fee application for duplication of effort. *Abrams v. Baylor College of Medicine*, 805 F.2d 526, 536 (5th Cir. 1986); *PUSH*, 788 F. Supp. at 1418. As observed in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717 (5th Cir. 1974), "the time of two or three lawyers in a courtroom or conference when one would do may be obviously discounted." Hours which result from a case being "overstaffed" are not hours "reasonably expended" on the litigation, and there should be "no compensation for hours spent in duplicative activity or spent in the passive role of an observer while other attorneys performed." *Leroy V,* 906 F.2d at 1079 (internal quotations omitted).

In addition to the many insufficient time descriptions, the fee application format utilized by the CANS Plaintiffs' attorneys here, which does not directly show the detailed time of all attorneys chronologically on a single combined format by specific substantive project, such as "Drafting Complaint," makes the required scrutiny for duplication of effort very difficult and requires cross referencing of scores of time entries. *See PUSH*, 788 F. Supp. at 1421 n.31

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substantive objections for excessive or duplicative work, or for the clerical or non-legal nature of that work, etc., are merged into that objection. In many circumstances, without some adequate explanatory detail, other substantive grounds for objection cannot be accurately evaluated. The "V" objection is thus preeminent, and Defendants do not in any manner waive any other objection by relying only on the lack of explanatory detail. It is the fee applicant's burden, not Defendants', to justify the productive and reasonable nature of the hours claimed.

(observing that "keeping time by activity or project is a preferable way for a group of lawyers to show the worth of their combined services.").

One glaring example of Plaintiffs' attorneys duplicative billing practices, in addition to multiple attorneys seeking compensation for one conference call, is the attendance of several Plaintiffs' attorneys at depositions. Ms. Schwartz traveled to Jackson to take two depositions on February 21, 2018. [Doc. 154-2 at 44]. Also in attendance, however, were two of Plaintiffs' other attorneys, Mr. Strugar and Ms. Llanes. [*Id.* at 54; Doc. 154-3]. Plaintiffs seek to tax the State of Mississippi and its taxpayers with several thousands of dollars for all three of these attorneys to travel to Mississippi and for two of them to observe the depositions. The duplicative hours claimed by Strugar and Llanes should be excluded from the lodestar. *Playboy Enterpises, Inc. v. Sanchez-Campuzano*, 2012 WL 12877432, at *5 (S.D. Tex. Apr. 19, 2012) (attendance of 3 attorneys at depositions deemed duplicative and unnecessary).

F. Excessive Time Claimed for Task Performed ("E").

Hours claimed which are disproportionate to a specific and identifiable task performed, or which are unnecessary or not demonstrably productive in the litigation, must be disallowed. *Watkins*, 807 F. Supp. at 412. As held by the Supreme Court in *Hensley*:

> The district court also should exclude from this initial fee calculation hours that were not "reasonable expended." SRep No. 94-1011, p. 6 (1976). Cases may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. . . .

461 U.S. at 434. In determining how much time is reasonably expended upon a discrete project, such as writing a brief, the Court is not obligated to accept the fee applicant's submission, but

may instead rely on its own common sense and litigation experience, deleting all excessive hours for the task. *Leroy V*, 906 F.2d at 1083.

One excessive use of time by Plaintiffs' attorneys was in the area of drafting pleadings and briefs. For instance, Plaintiffs seek reimbursement for over 70 hours of work in connection with the briefing of their motion to proceed under pseudonyms and to file documents under seal. [Doc. 18]. Ms. Schwartz claims about 37 hours, Mr. Agathocleous claims about 4 hours, Ms. Llanes claims 31.4 hours, and Mr. Strugar appears to claim 5 hours. Plaintiffs' counsel also spent an excessive amount of time drafting and revising the complaint. The Defendants submit that the inordinate amount of time Plaintiffs' attorneys devoted to these tasks provides further support for a substantial reduction in the number of hours that were reasonably expended.

8. Travel Time ("T").

Plaintiffs are correct that hours claimed by an attorney for necessary travel should be compensated at a reduced rate of 50% of the reasonable hourly rate. *See Watkins*, 807 F. Supp. at 414 (50% reduction in rate); *Hopwood*, 999 F. Supp. at 914 (50% reduction). However, Plaintiffs have failed to carry their burden of demonstrating that the travel hours for which they seek compensation were necessary and reasonable. As explained above, the travel hours claimed by Mr. Strugar and Ms. Llanes to attend two depositions in Jackson were duplicative. Similarly, Ms. Schwartz, Mr. Agathocleous, and Mr. Strugar traveled to Mississippi in September 2016 to meet with Plaintiffs. While it may been reasonable to send one attorney to Mississippi for this purpose, Plaintiffs have not shown that the presence of two other attorneys from other parts of the country was necessary to the litigation. For these reasons, the Court should exclude all travel hours claimed in the fee application, with the exception of those attributable to Ms. Schwartz.

9. Paralegal or Clerical Work Performed by Attorney ("P").

"Clerical work which does not require the skill of an attorney, but which an attorney nevertheless performs, may be compensated at a lesser rate than the attorney's customary hourly rate." *Morrow v. Ingram*, 2011 WL 815105, at *3 (S.D. Miss. Mar. 1, 2011) (citing *Cruz v. Hauck*, 762 F.2d 1230, 1235 (5th Cir.1985)). "Time spent on such tasks as letters to accompany motions for filing, review of lists and other routine matters should be compensated at the lesser rate as these are clerical duties that could have been handled by non-lawyers." *Id.* "Work of this nature is generally allowed at the paralegal billing rate." *Id.* Defendants have identified dozens of hours billed by Plaintiffs' attorneys for clerical and administrative tasks, including the following:

> "decryption, storage of discovery docs from state of Miss. email GS re same" – Shayana Kadidal - November 2, 2017
>
> "Notices of deposition, arranging for times with Brooks court reporter and attorneys fro county" – Ghita Schwartz – February 14, 2018
>
> "Research local rules on electronic signatures for electronic filing" - .6 hours – Stephanie Llanes – October 27, 2016
>
> "Prepare pro hac vice motion" – 0.2 hours – Matthew Strugar – October 11, 2016
>
> "Review/filing PHV applications for Ghita and Alexis; copies to cocounsel" – Jake Howard – October 10, 2016

10. Hours Expended on Attorney Fee Application ("A").

Hours expended by an attorney for work on the attorney fee application itself are completely discretionary with the district court and may be disallowed where the Court reduces the attorneys' fees sought by the applicant on the merits of the case. *Kellstrom*, 50 F.3d at 336 (5th Cir. 1995) (affirming district court's discretion to deny fees to work on fee application

where applicant "recovered only part of the costs and fees requested"); *Flowers v. Wiley*, 675 F.2d 704, 707 (5th Cir. 1982) (no fee for appeal of attorney fee issue where award was reduced). Moreover, even if some fees for work on the fee application are permitted, the "base rate for time spent on computing and enforcing attorneys' fees should be less than that allowed for professional services rendered primarily on the merits." *Leroy V*, 906 F.2d at 1079.

Plaintiffs claim they have incurred $23,835.00 in fees so far in preparing the motion for attorneys' fees and costs. To award such a large amount in attorneys' fees for a fee application that does not involve any complex issues of law would be unwarranted. *Cf.* Express Oil Change, LLC v. Mississippi Bd. of Licensure for Pro. Engineers & Surveyors, 2020 WL 7345661, at *15 (S.D. Miss. Dec. 14, 2020) (reducing attorneys' fees for preparing fee application to $6,619.50 in case where over $300,000 in attorneys' fees were sought). Given that the hours and total fee award claimed by multiple counsel in this case are excessive in relation to the limited success achieved and should be substantially reduced, the Court should exercise its discretion to deny fees for preparing the fee application under the circumstances here.

II. The Hourly Rates Requested by Plaintiffs are Unreasonable and Higher Than the Prevailing Market Rate.

"The 'reasonable hourly rate' for the lodestar calculation is 'calculated according to the prevailing market rates in the relevant community.'" *Anderson v. City of McComb*, 2016 WL 4261777, at *2 (S.D. Miss. Apr. 4, 2016) (quoting *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011)). Typically, "the relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits." *Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002) (citation and internal quotation marks omitted); *see also Hopwood v. State of Texas*, 236 F.3d 256, 281 (5th Cir. 2000) (affirming district court ruling

that "relevant legal market" was "not the District of Columbia but Austin, Texas" in affirmative action case litigated by Ted Olson). Here, the relevant legal market is the Northern Division of the Southern District of Mississippi. *E.g.*, *Mosley v. Nordquist*, 2016 WL 5794480, at *7 (S.D. Miss. Sept. 30, 2016).

Moreover, the "prevailing market rate" is "not the rate[] that 'lions at the may command.'" *Hopwood*, 236 F.3d at 281 (quoting *Leroy v. City of Houston*, 906 F.2d 1068, 1079 (5th Cir.1990). Instead, the prevailing market rate is the rate charged "'for similar services by lawyers of reasonably comparable skill, experience and reputation.'" *Anderson*, 2016 WL 4261777, at *2 (quoting *McClain*, 649 F.3d at 381). Plaintiffs bear the burden of "'produc[ing] satisfactory evidence that the[ir] requested rates are in line with those prevailing in the community[.]" *Id.*

"Generally, the reasonable hourly rate for a particular community is established through affidavits of other attorneys practicing there." *Tollett*, 285 F.3d at 368 (citation omitted). The Court may also consider decisions in cases involving a similar subject matter to determine the prevailing market rate. *See, e.g.*, *Payne v. Univ. of S. Mississippi*, 2016 WL 698130, at *5 (S.D. Miss. Feb. 19, 2016), *aff'd*, 681 F. App'x 384 (5th Cir. 2017); *Lighthouse Rescue Mission, Inc. v. City of Hattiesburg*, 2014 WL 1653108, at *3 n. 4 (S.D. Miss. Apr. 23, 2014) (examining rates approved in other "civil rights cases" in Southern District) (citations omitted). "[T]rial courts are considered experts as to the reasonableness of attorney's fees.'" *Schaeffer v. Warren Cty.*, 2017 WL 5709640, at *10 (S.D. Miss. Nov. 27, 2017) (quoting *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004)).

Plaintiffs argue that $450 per hour sought by Mr. McDuff is reasonable and consistent

with the prevailing market rates in the Jackson area for partners in regional firms. [Pls. Memo. at 11]. In support of this contention, Plaintiffs cite *Perez v. Bruister*, 2015 WL 5712883 (S.D. Miss. Sept. 29, 2015), for the proposition that the average partner rates in regional firms were $392/hour. However, as *Perez* noted that this average partner rate was taken from "firms with a presence in Mississippi," and it was not limited to partners who work in Mississippi. *Perez*, 2015 WL 5712883, at *6. Thus, it does not reflect the prevailing market rate in this community.

It certainly does not reflect the prevailing market rate for § 1983 litigation in this district. This Court has found hourly rates ranging from $200.00 to $375.00 per hour to be reasonable in § 1983 litigation. *See Anderson*, 2016 WL 4261777, at *3-5 (S.D. Miss. Apr. 4, 2016) (finding that, in § 1983 case, $375 per hour was a reasonable rate for attorney who had been practicing for almost 30 years, and $250 hourly rate was reasonable for attorney with 16 years of experience); *Stockstill v. City of Picayune*, 2017 WL 6327578, at *3 (S.D. Miss. Dec. 11, 2017) (finding $225 per hour appropriate for attorney with 29 years of experience and $150 per hour appropriate for attorney with 3 years of experience in "relatively simple freedom of speech case"); *Morrow v. Ingram*, 2011 WL 815105, at *2 (S.D. Miss. Mar. 1, 2011) ("$200.00 per hour is a reasonable hourly rate for senior level attorneys" in § 1983 case).[3]

Plaintiffs further contend that Mr. McDuff's proposed rate is reasonable given that Court approved a $450 hourly rate for him recently in *Thomas v. Reeves*, 2021 WL 517038, at *4 (S.D. Miss. Feb. 11, 2021). That case is inapposite because Mr. McDuff served as co-lead counsel and

[3] This Court has approved similar rates in other civil rights cases. *See Payne*, 2016 WL 698130, at *5 (approving rate of $300/hour for lead defense counsel in Title VII/Section 1983 case); *Lighthouse Rescue Mission*, 2014 WL 1653108, at *4 ("In light of Dalton's experience and specialization in RLUIPA litigation, the Court concludes that a rate of $325.00/hour is appropriate. The Court arrived at this rate by adding a modest enhancement for Dalton's particular expertise ($50.00/hour) to the upward boundary of customary rates in this District ($275.00).").

billed over 365 hours. *Id.* at *4, *11. By contrast, here Mr. McDuff was not lead counsel and had very little direct involvement in the litigation. He only seeks to be compensated for 12.7 hours of work. In *Jackson Women's Health Org. v. Currier*, 2019 WL 418550 (S.D. Miss. Feb. 1, 2019), an abortion rights case, Mr. McDuff sought an hourly rate of $450, but only worked 93.1 out of the 2400 hours expended by all of the prevailing parties' counsel. *Id.* This Court denied the requested hourly rate, and instead found that "an hourly rate of $375 represents a reasonable, prevailing-market rate for McDuff's work assisting as local counsel in this case." *Id.* at 3. Given that Mr. McDuff played an even more limited role as local counsel in this case, the Court should find that a reasonable hourly rate for his services is $325.

Plaintiffs request that Jake Howard be compensate at a rate of $400 an hour. Mr. Howard graduated from Harvard Law School in 2009. He had over five years of experience in civil rights litigation when this case began. Mr. Howard is currently the Legal Director of MacArthur Justice Center at the University of Mississippi School of Law. Just like Mr. McDuff, Mr. Howard was not directly involved in the litigation. The work he performed mainly consisted of reviewing and editing pleadings and briefs drafted by other attorneys. He only seeks to be compensated for 11.2 hours. Because he merely assisted the other attorneys litigating the case, a reasonable hourly rate for Mr. Howard is $275.[4]

A. Plaintiffs Have Not Shown That It Was Necessary to Retain Out-of-District Counsel and That They Should Be Awarded Out-of-District Rates.

Plaintiffs' argument that their counsel from CCR and Mr. Strugar should be awarded out-of-district rates because Plaintiffs "needed to retain out-of-district counsel to secure adequate representation" should be rejected. [Pls. Memo at 8]. The evidence presented by Plaintiffs

4 *Cf. Schaeffer*, 2017 WL 5709640, at *10 (approving rate of $275 per hour for attorney with over 12 years of experience).

regarding the need to retain out-of-state counsel fails to meet the standard set forth in *McClain v. Lufkin Industries, Inc.*, 649 F. 3d 374 (5th Cir. 2011), so as to justify an award of hourly rates consistent with the prevailing market rate for civil rights litigation in the Southern District of New York and Los Angeles, California.

Although it is generally true that "the relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits," *Tollett*, 285 F.3d at 368, in *McClain*, the Fifth Circuit created a narrow exception to this rule where the fee applicant presents "abundant and uncontradicted evidence prov[ing] the necessity of . . . turning to out-of-district counsel." 649 F.3d at 382. The Fifth Circuit further held "that in the unusual cases where out-of-district counsel are proven to be necessary to secure adequate representation for a civil rights plaintiff, the rates charged by that firm are the starting point for the lodestar calculation." *Id.* at 383 (citations omitted). However, the *McClain* Court emphasized the "atypical" circumstances of the case, *id.* at 387, recognizing that "the record [wa]s replete with affidavits from a variety of expert employment lawyers who swore that no Texas attorneys were willing and able to assist in such a large case that might drag on for years without any guarantee of financial remuneration." *Id.*

As an initial matter, Plaintiffs maintain that the "essence of the *McClain* standard is whether Plaintiffs' choice to retain out-of-district counsel . . . was *reasonable*." [Pls. Memo. at 7 (emphasis in original)]. This interpretation of *McClain* is fundamentally flawed. *McClain* instructs lower courts to not award out-of-district rates unless the fee applicant "prove[s] the necessity of . . . turning to out-of-district counsel" with "abundant and uncontradicted evidence." 649 F.3d at 382. Thus, whether it was reasonable to retain attorneys from CCR and Los

Angeles is legally irrelevant; the dispositive question is whether it was necessary. *See Davis v. Perry*, 991 F. Supp. 2d 809, 843 (W.D. Tex. 2014), supplemented, 2014 WL 172119 (W.D. Tex. Jan. 15, 2014), *and rev'd sub nom. on other grounds*, *Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015) ("Although it might have been reasonable for Plaintiffs to hire D.C. counsel, Plaintiffs have failed to prove that it was necessary, as *McClain* requires.").

Unlike *McClain*, where the record was "replete with affidavits" conclusively demonstrating the unavailability of Texas attorneys, the only evidence Plaintiffs have submitted regarding the need to retain counsel from CRR and Paul, Weiss is the declaration Attorney Cliff Johnson, which does not indicate that any attempts to locate Mississippi counsel were made before this suit was filed. Mr. Johnson states that he is unaware of any other Mississippi lawyers who would have been willing to take on this case and have been able to adequately represent Plaintiffs for a variety of reasons, including (1) the unpopularity of sex offenders,[5] (2) lack of expertise in this type of litigation, and (3) lack of time and resources needed to effectively litigate a case that would take years to resolve. [Johnson Decl. at ¶¶ 6-10]. This is insufficient to prove that it was necessary for Plaintiffs to hire out-of-district counsel. *See Davis*, 991 F. Supp. 2d at 843-44 ("Richards's affidavit states only that he was unable to fully commit to the case and that he was unaware of any other Texas attorney who would have been able to handle the case. This evidence does not prove that no other attorneys were available.").

Moreover, Plaintiffs' position regarding out-of-district rates is gravely undermined by the fact that in *Doe v. Jindal*, Civil Case No. 2:11-cv-00388-MLCF-ALC (E.D. La.), the litigation

5 Contrary to Plaintiffs' claims, there are attorneys in Mississippi willing to represent sex offenders and petition for them to be removed from the MSOR. *E.g.*, *Witten v. State ex rel. Mississippi Dep't of Pub. Safety & Crim. Info.* Ctr., *Sex Offenders Registry*, 145 So. 3d 625 (Miss. 2014); *Mississippi Dep't of Pub. Safety v. Herrington*, 290 So. 3d 1247, 1248 (Miss. 2020).

that gave rise to this case, counsel CCR, including Alexis Agathocleous, requested an hourly rate of $300 "which [wa]s consistent with fees charged by and awarded to attorneys with 10 years of litigation experience in civil rights matters in New Orleans." Pls. Motion for Atty Fees and Costs [Doc. 113-1 at 9].

Regardless, Plaintiffs have not offered any evidence that there was any attempt to find local counsel (besides Mr. McDuff and Mr. Howard) to handle this case. Plaintiffs, therefore, have failed to present "abundant and uncontradicted evidence" that local counsel was unavailable and that it was necessary to turn to out-of-district counsel. *See Davis*, 991 F. Supp. 2d at 843 ("Pangburn and Brooks state that they were unable to find anyone with adequate experience, but they fail to state what measures they took to find counsel. Accordingly, their affidavits fail to prove that no competent Texas attorneys were available."); *cf. U.S. ex rel. Rigsby v. State Farm Fire & Cas. Co.*, 2014 WL 691500, at *11-12 (S.D. Miss. Feb. 21, 2014) (finding that fee applicant failed to prove the necessity of hiring out-of-district counsel, where they submitted only two declarations indicating that they had merely contacted one firm in Jackson and one local law firm on the Gulf Coast about representing them). Accordingly, the Court should conclude that the hourly rates Matthew Strugar and counsel from CCR should be determined with reference to the prevailing market rate in the Northern Division of the Southern District.

Plaintiffs request modified New York hourly rates of $450 for CCR attorneys Ghita Schwartz and Alexis Agathocleous. Ms. Schwartz graduated from Columbia University School of Law in 1998. She had more than 15 years of litigation experience in the areas of civil rights and public interest law at the time this lawsuit was filed. She worked at CCR from 2012 to 2021 and served as lead counsel in this case. Mr. Agathocleous graduated from Yale Law School in 2003. As noted above, in *Doe v. Jindal* he requested a local hourly rate of $300. Defendants

submit that $300 is a reasonable hourly rate for both Ms. Schwartz and Mr. Agathacleous.

Shayana Kadidal seeks a New York hourly rate of $550 for the work he performed in this case. Ms. Kadidal graduated from Yale Law School in 1994. He has worked at CCR since 2001. Although he is the most experienced attorney besides Mr. McDuff, he also played a limited role in the litigation. He only billed 51 hours, and his timesheet reflects that he did not become involved in this litigation until almost a year after it began. Further, the work he performed largely consisted of assisting the other attorneys and helping Mr. Strugar put together the fee application. Accordingly, an hourly rate of $300 is reasonable.

Stephanie Llanes requests an hourly rate of $250. Ms. Llanes did not graduate from law school until 2016. Given her lack of litigation experience, a reasonable hourly rate would be $200 in this market.[6]

Matthew Strugar seeks a modified Los Angeles rate of $450 per hour. Mr. Strugar graduated from USC Law School in 2004. He has worked for CCR and had several years of experience in civil rights litigation when this case began. Mr. Strugar and Ms. Schwartz did the bulk of the work in this case. Accordingly, Defendants submit that an hourly rate of $300 is reasonable for Mr. Strugar.

Plaintiffs request a modified New York paralegal rate of $125 an hour for Claire Dailey. Ms. Dailey has worked at CCR for 15 years as a Senior Legal Worker. This Court has held that lawyers are not allowed to seek out-of-district rates for paralegals or a functional equivalent such as law clerks. *Walnut Grove*, 2017 WL 4228751, at *8 (S.D. Miss. Sept. 22, 2017). Moreover,

6 Even if this Court decides to use New York rates, Ms. Llanes' hourly rate should be no more than $225. *See Currier*, 2019 WL 418550, at *7 (S.D. Miss. Feb. 1, 2019) (junior associates with less than two years' experience assigned an hourly rate of $225, which was slightly above the lowest rate for civil rights litigation in the Southern District of New York).

the Court has stated that a reasonable hourly rate for a paralegal in the Southern District is $100. *Id.* Therefore, the Court should assign an hourly rate of no more than $100 Ms. Dailey.

III. The Lodestar Should Be Reduced to Account for Lack of Success

Considering the foregoing, the rates sought by Plaintiffs are much higher than the prevailing market rate in this community for Section 1983 litigation, and the hours billed are excessive, duplicative, and vague. The Court should reduce both as described above.

The lodestar does not end the inquiry into Plaintiffs' fees request. After calculating the lodestar, the Court may decrease or enhance the amount based on its consideration of the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974). The "most critical factor" in determining a reasonable fee "is the degree of success obtained." *Hensley*, 461 U.S. at 436. The Supreme Court "endorsed using 'the important factor of the "'results obtained"' to decrease the lodestar, noting that where a plaintiff achieves 'only partial or limited success,' the lodestar may be excessive. *Combs*, 829 F.3d at 394 (quoting *Hensley*, 461 U.S. at 434, 436). Thus, "courts must consider the plaintiff's degree of success to determine whether the lodestar is excessive." *Id.* (citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)). "A reduced fee award is appropriate if the *relief*, however significant, is limited in comparison to the scope of the litigation as a whole." *Hensley*, 461 U.S. at 440 (emphasis added).

There should be no doubt that the relief obtained in this case is limited in comparison to scope of the litigation as a whole. As discussed above, Plaintiffs sought to effectuate the removal of all sex offenders from the MSOR who have been convicted of unnatural intercourse in Mississippi or sodomy in another state, regardless of the facts underlying their convictions. Instead of achieving that ultimate goal, Plaintiffs only obtained partial relief – the removal of the people convicted of CANS. Had this lawsuit from the outset been limited to the issue of

registrants with CANS convictions, it is inconceivable that Plaintiffs' counsel would have spent over a thousand hours litigating this case. The vast majority of the litigation in this case was engendered by Plaintiffs' unsuccessful claim challenging the facial validity of Mississippi's unnatural intercourse statute and the concomitant registration requirement for those convicted of unnatural intercourse or an equivalent crime in another state. For these reasons, the Court should reduce the lodestar and award Plaintiffs no more than $75,000 in attorneys' fees.

IV. The Plaintiffs Seek Reimbursement For Unreasonable and Non-Recoverable Expenses.

"An award for out-of-pocket expenses incurred by counsel for the prevailing parties is limited to those expenses which the attorney would normally, customarily, and routinely bill a fee-paying client." *Lighthouse Rescue*, 2014 WL 1653108, *5 (S.D. Miss. Apr. 23, 2014) (quoting *Beamon v. Ridgeland*, 666 F. Supp. 937, 946 (S.D. Miss. 1987)). "[I]tems proposed by winning parties as costs should always be given careful scrutiny." *Kellstrom*, 50 F.3d at 335 (quoting *Farmer v. Arabian American Oil Co*., 379 U.S. 227, 235 (1964), *overruled on other grounds by Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987)). Out-of-pocket expenses "must not be awarded when they are extravagant or unnecessary." *Curtis v. Bill Hanna Ford*, 822 F.2d 549, 553 (5th Cir. 1987). It is the fee applicant's burden to demonstrate the reasonable and necessary nature of the expenses claimed. *See PUSH*, 788 F. Supp. at 1423.

Here, Defendants must object to virtually all of the travel and meal expenses claimed by the Plaintiffs' attorneys. The cost detail [Doc. 154-2 at 60-61] listing the expenses and costs purportedly incurred by the attorneys lacks the basic requisite information needed to ascertain

the necessary nature of the expenses. Travel expenses such as airfare, lodging, and meals are listed by attorney and date, but there is no indication of the destination or purpose for any of the trips, with the exception of the charges on March 1 and March 7, 2018 for Mr. Strugar's, Ms. Schwartz's, and Ms. Llanes' trip to Mississippi for depositions. Moreover, there are multiple travel-related expenses that were incurred January and February 2016, which is more than six months the complaint was filed. There is no information provided regarding the purpose of these expenses. They should be therefore denied. *See, e.g.*, *M.B. v. Howard*, 2021 WL 3681084, at *18-19 (D. Kan. Aug. 19, 2021) (disallowing travel-related expenses incurred before litigation because Plaintiffs failed to show they were necessary to litigation). Similarly, the spreadsheet includes October 5, 2016 entry for a "Breakfast meeting with co-counsel" without identifying the diners (other than Mr. Agathacleous), the location for that meal. Based on the scarce information provided – lawyer's name, date, brief description, and cost – it is impossible for the Defendants or the Court to discern exactly what the reported expenses are meant to cover, much less the reasonableness or purpose of the costs for which they seek reimbursement.

The expenses incurred by Mr. Strugar and Ms. Llanes in connection with the February 2018 depositions should also be rejected as non-compensable because Plaintiffs have not demonstrated the need for three attorneys at one deposition. The only travel-related costs that may be recovered are those of Ms. Schwartz for this one trip to Mississippi, since the spreadsheet reflects that it was for a litigation-related purpose.

Further, Defendants must object to Plaintiffs seeking to recover pro hac vice fees, fees related to certificates of good standing, and Stephanie Llanes' admission fee to the Southern District of New York. This Court has held that pro hac vice fees are not reimbursable. *Thomas v. Reeves*, 2021 WL 517038, at *13 (S.D. Miss. Feb. 11, 2021). The same should be true for

certificates of good standing fees and court admission fees.

Last, Defendants object to the multiple FedEx and UPS charges. The cost report provides no meaningful information regarding the purpose of these expenses and whether they were reasonable. Therefore, Plaintiffs have failed to carry the burden of proving that these expenses were necessary to the litigation.

In sum, the only costs the Court should allow Plaintiffs to recover are Ms. Schwartz's travel expenses for the February 2018 trip to Mississippi and the filing fee.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court award Plaintiffs no more than $75,000 in attorneys' fees and costs related to the filing fee and Ms. Schwartz's February 2018 travel expenses.

Respectfully submitted this the 10th day of January, 2022.

LYNN FITCH, Attorney General of the State of Mississippi; SEAN TINDELL, Commissioner of the Mississippi Department of Public Safety; CHARLIE HILL, Director of the Mississippi Sex Offender Registry; COLONEL CHRIS GILLARD, Director of the Mississippi Highway Patrol; and LIEUTENANT COLONEL JIMMY JORDAN, Director of the Mississippi Bureau of Investigation

By: *s/Wilson Minor*

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CERTIFICATE OF SERVICE

This is to certify that on this day I, Wilson Minor, Special Assistant Attorney General for the State of Mississippi, electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notice of such filing to all counsel of record.

THIS, the 10th day of January, 2022.

s/Wilson Minor
WILSON MINOR