UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
MARC GREENBERG,

Plaintiff,

REPORT AND RECOMMENDATION

- against -

99 CV 3666 (DGT)

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.
----------X

On June 28, 1999, plaintiff Marc Greenberg, proceeding pro se, commenced this action against defendant New York City Transit Authority ("NYCTA" or "Transit Authority"), alleging that he had been terminated from his position at the Transit Authority in violation of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 et seq. Following the filing of an answer, discovery in the case proceeded with plaintiff acting in a pro se capacity until July 3, 2001, when plaintiff obtained counsel. On July 17, 2001, the firm of Gladstein, Reif & Meginniss, LLP ("GR&M") filed plaintiff's First Amended Complaint, in which plaintiff alleged that the Transit Authority violated his rights under the ADA; the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 290 et seq.; and the New York City Human Rights Law ("NYCHRL"), N.Y. City Admin. Code § 8-101 et seq. A Second Amended Complaint was subsequently filed by counsel on April 5, 2002.

In September 2004, the district court granted in part, and denied in part, plaintiff's cross-motion for summary judgment. The defendant's motion for summary judgment was similarly granted in part and denied in part. Following extensive negotiations, the parties reached a settlement of the plaintiff's underlying claims and executed a Settlement Agreement on

September 29, 2005.

Presently pending before this Court, on referral, is plaintiff's motion for attorneys' fees and costs. For the reasons set forth below, the Court respectfully recommends that plaintiff be awarded attorneys' fees and costs in the amount of $ 234,642.85.

FACTUAL BACKGROUND[1]

In 1978, plaintiff was hired by the Transit Authority as a "Maintenance Helper B" and was promoted to the position of "Bus Maintainer" approximately one year later. (Compl. ¶¶ 7, 8).[2] On September 10, 1987, while working, plaintiff tore the meniscus in his left knee. (Id. ¶ 9). He took a leave of absence in April 1988 and underwent surgery on his knee in August 1988. (Id. ¶¶ 13, 14). He returned to work on June 1, 1989 and was diagnosed with torn cartilage in his right knee and herniated disks in his lower back approximately one month later (id. ¶¶ 15, 16), but did not miss work as a result. (Id. ¶ 18). In August 1990, plaintiff was reclassified as a Transit Authority Property Protection Agent to accommodate his medical restrictions. (Id. ¶ 17; Pl.'s Mem.[3] at 4).

On July 11, 1994, while working, plaintiff's right knee buckled and he was taken to

---

[1]The facts as set forth herein are taken largely from plaintiff's Second Amended Complaint and are recited here simply to explain the plaintiff's claims. As discussed in the district court's decision of September 27, 2004, there were issues of material fact in dispute regarding plaintiff's claims that precluded entry of summary judgment in its entirety. See Greenberg v. New York City Transit Auth., 336 F. Supp. 2d 225 (E.D.N.Y. 2004).

[2]Citations to "Compl." refer to Plaintiff's Second Amended Complaint, attached as Exhibit A to the Declaration of Margaret A. Malloy, Esq. in Support of Application for Attorney's Fees and Costs, dated January 30, 2006 ("Malloy Decl.").

[3]Citations to "Pl.'s Mem." refer to Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Attorneys' Fees, dated January 30, 2006.

Roosevelt Hospital, where he was released the same day with instructions to use a cane. (Compl. ¶ 19). Plaintiff was further instructed by the Transit Authority to see the NYCTA Medical Services Division, where it was determined upon visit that he could not work for two weeks. (Id. ¶ 20). Although he was told by the Medical Services Division to return for a visit on July 26, 1994 (id.), on July 25, 1994 plaintiff received a letter, dated July 21, 1994, informing him that he had been terminated from employment because he had been "'unable to perform the duties of [his] title due to a disability resulting from a service connected (injury/illness) since 9/10/87.'" (Id. ¶ 21).

Over the next three years, plaintiff made numerous unsuccessful attempts at reinstatement. (Pl.'s Mem. at 4).[4] In December 1995, a Workers' Compensation Law Judge ("WCLJ") found that the Transit Authority had violated the Workers' Compensation Law by firing plaintiff in 1994, and ordered the Transit Authority to reinstate plaintiff if he passed a medical examination. See Greenberg v. New York City Transit Auth., 336 F. Supp. 2d at 228 (providing a brief overview of prior proceedings). Upon review, the New York State Workers' Compensation Board ("WCB") found that the NYCTA had no valid reason for discharging

[4]The Transit Authority contends that, pursuant to Section 71 of the New York State Civil Service Law, public employers such as the NYCTA are permitted to terminate, with certain reinstatement rights, civil service employees who have not worked for one year or more as a result of a job-related injury. (See Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorney's Fees and Costs, dated March 3, 2006 ("Def.'s Mem.") at 2). At the time of Mr. Greenberg's termination, the Transit Authority operated under a policy in which an employee was automatically terminated when his "cumulative" periods of absence due to the same injury exceeded one year. (Id. at 2-3). Thus, the NYCTA takes the position that when plaintiff was terminated, the Transit Authority was "acting . . . entirely mathematically and without animus aimed at Mr. Greenberg personally." (Id. at 3). Since his right to reinstatement depended on the existence of a vacancy in his title, the Transit Authority asserts that plaintiff could not be re-hired until mid-1997 when such a vacancy occurred. (Id.)

plaintiff. Id. Although the Transit Authority contested the findings of the WCLJ, the WCB affirmed the judge's decision and the Appellate Division dismissed defendant's appeal on September 11, 2002. Id. Plaintiff was reinstated in June 1997. Id. at 234.

Plaintiff pursued his claims of discrimination against the NYCTA pro se for two years from 1999 to 2001. Counsel appeared in July 2001, representing plaintiff in this federal action as well as before the Workers' Compensation Board. (Malloy Decl. ¶ 3). Counsel claims that she not only filed two amended complaints and engaged in two years of extensive discovery that included numerous letters, phone calls, and applications for court orders to compel discovery, but also that she filed and responded to motions for summary judgment. (Id. ¶¶ 17-19, 29). In addition, defendants filed numerous objections to discovery rulings issued by this Court, sought to dismiss plaintiff's complaint, and moved for reconsideration of the summary judgment decision. (Id. ¶¶ 29, 31). In connection with these various motions, plaintiff was required not only to submit extensive paperwork and review a substantial amount of records, but was also required, pursuant to the district court's rules, to submit pre-motion conference letters and responses. (See id. ¶¶ 30, 31, 34). Following the district court's issuance of its decision on the motions for summary judgment, the parties engaged in extensive settlement discussions before this Court and then in two mediation sessions. (Id. ¶¶ 37, 40, 42).

The Stipulation and Order of Dismissal, filed on October 7, 2005, provides that plaintiff is a "prevailing party" and that the court retains jurisdiction over the case to determine the issue of attorneys' fees and costs and to enforce the terms of the Settlement Agreement. Although the parties attempted to resolve their fee dispute, their efforts at mediation were unsuccessful. Accordingly, plaintiff filed this application seeking attorneys' fees and costs in the amount of

$295,106.45.[5] Defendant objects to both the hourly rates charged by plaintiff's counsel and the reasonableness of the number of hours billed, contending that a reasonable fee in this case "should not exceed $50,000." (Def.'s Mem. at 1-2).

DISCUSSION

A. Prevailing Party

Both the ADA and the NYCHRL allow the court to award a prevailing party reasonable attorneys' fees and costs. See 42 U.S.C. § 12205; N.Y. City Admin. Code § 8-502(f). Interpretation of the fee shifting provision of the ADA, which provides that the court "in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs," is governed by those standards applicable to the issuance of attorneys' fees under other federal statutes in which Congress has authorized a "prevailing party" to receive a fee award.[6] 42 U.S.C. § 12205; see Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 602-03 (2001); Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). While the issuance of attorneys' fees under the NYCHRL is generally governed by similar standards, see McGrath v. Toys "R" Us, Inc., 409 F.3d 513 (2d Cir. 2005) (detailing a

[5]While plaintiff's calculations indicate that he is seeking a total of $295,101.45 in fees and costs, the Court's own calculation of the amount requested totals $295,106.45, due to a discrepancy between the amount of costs listed in the firm's billing records ($8,118.33) and amount of costs detailed in the fee affidavit ($8,113.33). (See Malloy Decl. ¶ 57; Ex. I). This figure includes the total amount of fees and costs requested for work conducted through the preparation of the fee application.

[6]See, e.g., 42 U.S.C. § 1988(b), which provides that "[i]n any action or proceedings to enforce a provision of [the federal civil rights laws], 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."

statement made by the New York Court of Appeals in response to the court's certification, in which the Court of Appeals noted that the section was "'substantively and textually indistinguishable from its federal counterparts'") (internal citation omitted), the law was recently amended in way that distinguishes it from its federal counterparts by expanding who qualifies as a "prevailing party" for attorneys' fees purposes.[7] See N.Y. City Admin. Code § 8-502(f). As discussed in reference to their federal analogues, there is "a presumption" that a prevailing party "should recover an attorney's fee unless special circumstances would render such an award unjust." Kerr v. Quinn, 692 F.2d 875, 877 (2d Cir. 1982); see also Raishevich v. Foster, 247 F.3d 337, 344 (2d Cir. 2001) (noting that a district court's discretion to deny attorneys' fees is "narrowed by a presumption that successful civil rights litigants should ordinarily recover attorneys' fees unless special circumstances would render an award unjust").

For purposes of awarding fees under the federal fee shifting provisions, a plaintiff is considered a "prevailing party" "when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-12 (1992); see also Blackledge v. Carlone, 126 F. Supp. 2d 224, 231-32 (D. Conn. 2001). Here, plaintiff is considered a prevailing party not only because the parties so stipulated in the Settlement Agreement, but also because he obtained at least partial relief on his claims against the Transit

[7]Specifically, the NYCHRL now provides that a "prevailing party" includes a "plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of judgment in such plaintiff's favor." N.Y. City Admin. Code § 8-502(f).

Authority through the settlement.[8] See Farrar v. Hobby, 506 U.S. at 111 (holding that "to qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgment against the defendant . . . or comparable relief through a consent decree or settlement") (citations omitted)). In Ruggiero v. Krzeminski, the Second Circuit held that even where a party achieves only partial success, the party may be considered "prevailing" if he succeeds on a significant issue in the litigation which achieves some of the benefit pursued. 928 F.2d 558, 564 (2d Cir. 1991) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)); see also Raishevich v. Foster, 247 F.3d at 345 (holding that even where a plaintiff is awarded an amount less than he sought, fees are warranted, so long as the relief obtained is "'of the same general type' as the relief sought"); Cabrera v. Jakabovitz, 24 F.3d 372, 393 (2d Cir.) (awarding fees after a jury verdict of nominal damages where plaintiffs "prevailed on a significant legal issue" and citing Farrar v. Hobby, 506 U.S. at 121 (O'Connor, J., concurring), for the proposition that "an award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved"), cert. denied, 513 U.S. 876 (1994). As the Second Circuit noted, "success may be assessed by

---

[8]The Court notes that the Supreme Court has narrowed its approach regarding who qualifies as a "prevailing party" for fee purposes. See Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Res., 532 U.S. at 604-05 (rejecting the catalyst theory and noting that "enforceable judgments on the merits and court-ordered consent decrees create the 'material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees"). However, the Second Circuit has stated that, in accordance with the Buckhannon decision, "the district court's retention of jurisdiction over the [parties' private settlement] Agreement . . . provides sufficient judicial sanction to convey prevailing party status on plaintiffs." See Roberson v. Giuliani, 346 F.3d 75, 84 (2d Cir. 2003) (finding that "the district court's retention of jurisdiction in [such a] case is not significantly different from a consent decree and entails a level of judicial sanction sufficient to support an award of attorney's fees").

examining whether [a] plaintiff[ ] can 'point to a resolution of the dispute which changes the legal relationship between [plaintiff] and the defendant[ ].'" Ruggiero v. Krzeminski, 928 F.2d at 564 (quoting Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. 782, 792 (1989)).

B. Lodestar

To calculate the proper measure of a fee award, courts first determine a "lodestar" figure by multiplying the number of hours reasonably spent by counsel on the matter by a reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. at 433; Cruz v. Local Union No. 3 of Int'l Bhd. of Elec. Workers, 34 F.3d 1148, 1159 (2d Cir. 1994); F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d 1250, 1263 (2d Cir. 1987); Cowan v. Ernest Codelia, P.C., No. 98 CV 5548, 2001 WL 30501, at *7 (S.D.N.Y. Jan. 12, 2001) (applying New York law), aff'd, 50 Fed. Appx. 36 (2d Cir. 2002). "While there is a strong presumption that this amount represents a reasonable fee," Cowan v. Ernest Codelia, P.C., 2001 WL 30501, at *7, the resulting "lodestar" figure may be adjusted upward or downward based on other considerations. See Quaratino v. Tiffany & Co., 166 F.3d 422, 425 (2d Cir. 1999). If the court chooses to either reduce or increase the lodestar figure, it is required to state specific reasons for its determination. See DiFilippo v. Morizio, 759 F.2d 231, 234 (2d Cir. 1985).

It is well established that "'[t]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.'" Cruz v. Local Union No. 3 of Int'l Bhd. of Elec. Workers, 34 F.3d at 1160 (quoting Hensley v. Eckerhart, 461 U.S. at 437). In determining whether a fee is appropriate, the court considers a

number of factors, including the "'difficulty of the questions involved; the skill required to handle the problem; the time and labor required; the lawyer's experience, ability and reputation; the customary fee charged by the Bar for similar services; and the amount involved.'" F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d at 1263 (quoting In re Schaich, 391 N.Y.S.2d 135, 136 (2d Dep't), appeal denied, 397 N.Y.S.2d 1026 (1977)); see also Mar Oil, S.A. v. Morrissey, 982 F.2d 830, 841 (2d Cir. 1993) (stating rule, and elaborating that the phrase "'the amount involved' . . . reflects the principle that the fee to be awarded generally cannot exceed the amount recovered"). The ultimate determination is whether, considering all the circumstances, the fee requested is "reasonable." See Hensley v. Eckerhart, 461 U.S. at 433-37.

Here, defendant argues that the fee awarded to plaintiff's counsel should not exceed $50,000. (See Def.'s Mem. at 7-23). Defendant's argument is based on the rationale that, because plaintiff's retainer agreement specified that he would pay a contingency fee equal to one-third of his recovery (see Malloy Reply Decl. ¶ 6),[9] counsel's fees should be capped at $50,000, an amount equal to one-third of the $150,000 settlement amount paid to plaintiff. (Def.'s Mem. at 8-9). This rationale has been rejected by the courts as inconsistent with the intention of Congress "to encourage successful civil rights litigation." Blanchard v. Bergeron, 489 U.S. 87, 95 (1989) (rejecting a limit on the fee award based on the amount set forth in the contingency fee agreement); see also Quaratino v. Tiffany & Co., 166 F.3d at 425-26 (rejecting notion that fee award should be linked to "expected monetary recovery," finding that such an

[9]Ms. Malloy's Declaration indicates that the retainer agreement provided that the firm would recover the *greater* of either one-third of plaintiff's gross recovery or any court-awarded fees. Because the Court decides the issue as it does, it finds it unnecessary to resolve this dispute at this time.

"approach conflicts with the legislative intent and rationales of the fee-shifting statute"). Accordingly, the Court has followed the standards set forth in relation to comparable federal fee shifting provisions, and has considered plaintiff's fee application on the basis of a lodestar calculation.

Addressing the lodestar method more directly, defendant contends that any resulting lodestar calculation should be reduced to account for the "limited" nature of plaintiff's success, namely that, pursuant to the Settlement Agreement, plaintiff did not prevail in his request for punitive damages, back pay, or prejudgment interest.[10] (Def.'s Mem. at 20-21). Moreover, defendant points out that plaintiff released numerous unrelated claims against the Transit Authority (id.), noting specifically that he "released, waived, or otherwise gave up – with prejudice – some 30 pending labor grievances, most seeking money." (Schoolman Decl. ¶ 12).[11] Defendant contends that this "mixed or 'limited' success should have consequences for the proper calculation of reasonable attorneys' fees," and should result in a reduction of the attorneys' fees award.

Indeed, where claims are based on separate legal theories and involve different facts, the unrelated claims should "be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim[s]." Hensley v. Eckerhart, 461

---

[10]In response, plaintiff's counsel contends that the results of a related proceeding had rendered the request for back pay in the current suit moot, as plaintiff had already been awarded such relief, and that plaintiff received all relief sought as of the time that summary judgment motions were filed. (See Plaintiff's Reply Memorandum of Law in Support of Plaintiff's Motion for Attorneys' Fees and Costs, dated March 17, 2006 ("Pl.'s Reply Mem.") at 17).

[11]Citations to "Schoolman Decl." refer to the Declaration of Richard Schoolman in Opposition to Plaintiff's Motion for Attorney's Fees and Costs, dated March 3, 2006.

U.S. at 435 (noting that this result is required due to "congressional intent to limit [fee] awards to prevailing parties"); see also Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. at 789; Uviedo v. Steves Sash & Door Co., 753 F.2d 369, 371 (5th Cir. 1985) (holding that the party's unrelated claims should be considered separately in determining entitlement to fees), cert. denied, 474 U.S. 1054 (1986). However, while a prevailing party may not obtain fees for unsuccessful and distinct claims, "where time expended on successful claims is so intermingled with time spent on unsuccessful ones that a court cannot separate the two, no fee reduction is necessary." Bridges v. Eastman Kodak Co., No. 91 CV 7985, 1996 WL 47304, at *10 (S.D.N.Y.) (citing Terminate Control Corp. v. Horowitz, 28 F.3d 1335, 1343 (2d Cir. 1994), aff'd, 102 F.3d 56 (2d Cir. 1996)).

Here, plaintiff's ADA, NYSHRL, and NYCHRL claims arise from the same set of facts and interrelated legal theories. Although plaintiff received only some of the remedies that he sought initially, this does not transform the suit into one arising out of distinctly different facts or legal theories. Therefore, the Court's inquiry must focus on the "significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." See Hensley v. Eckerhart, 461 U.S. at 435. Subject to the limitations detailed elsewhere in this Report and Recommendation, the Court finds that the substantial damages award contained in the Settlement Agreement merits plaintiff's counsel "a fully compensatory fee." Id.

C. Excessive Rates

Using a lodestar calculation, defendant first takes issue with plaintiff's hourly rates. Defendant challenges plaintiff's counsel's billing rates as unreasonable because the rates are

higher than the prevailing rates in the Eastern District of New York. (Def.'s Mem. at 9-15). See Cruz v. Local Union No. 3 of Int'l Bhd. of Elec. Workers, 34 F.3d at 1159 (noting that the rates charged must be "'in line with those [rates] prevailing in the community for similar services of lawyers of reasonably comparable skill, experience, and reputation'" (quoting Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984)); see also Rotella v. Board of Educ. of the City of New York, No. 01 CV 0434, 2002 WL 59106, at *2 (E.D.N.Y. Jan. 17, 2002) (stating that "this court finds that the prevalent market rate in this district is in the range of $200 to $250 for partners and between $100 to $200 for junior and senior associates"). Indeed, the Second Circuit has held that the rates used to calculate the "lodestar" should be in line with those rates prevailing in "'the district in which the court sits.'" Luciano v. Olsten Corp., 109 F.3d 111, 115 (2d Cir. 1997) (quoting Polk v. New York State Dep't of Corr. Servs., 722 F.2d 23, 25 (2d Cir. 1983)); see also Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany, 369 F.3d 91, 95–96 (2d Cir. 2004).

In support of plaintiff's fee application, counsel for plaintiff has submitted the Declaration of Margaret A. Malloy ("Malloy Decl."), which details the firm's contemporaneous billing records and includes a breakdown of the hourly rates charged by each individual who worked on the case. (See Malloy Decl. ¶ 59; Ex. H). According to those records, Ms. Malloy, an associate who carried the laboring oar in the litigation and billed the bulk of the total number of hours, charged her time at the rate of $235.00 per hour. (Id. ¶ 59). Ms. Malloy graduated from Columbia Law School in May 1999, and served as a law clerk in the Southern District of New York before starting at GR&M in the fall of 2000. (Id. ¶¶ 61, 62). According to her Declaration, Ms. Malloy's practice includes representation of employees and unions in various

matters, including work on a class action alleging age discrimination, an ADA action brought by two unions against the NYCTA, and various other employment-related matters. (Id. ¶ 62).

In addition to Ms. Malloy, two of the firm's partners billed time on the case. One of those partners, James Reif, billed 56.40[12] hours at the rate of $410.00 per hour. (Id. ¶ 59). According to Mr. Reif, he received his J.D. from Rutgers University School of Law in 1969. (Reif. Decl. ¶ 4). Upon passing the bar examination in 1969, he served as counsel to Volunteers in Service to America for one year before joining the Center for Constitutional Rights in New York City as a staff attorney, a position he occupied from 1970-1973. (Id. ¶¶ 5-7). Mr. Reif served on the national staff of the National Lawyers Guild from 1973 to 1974 before joining GR&M as a partner in 1975. (Id. ¶¶ 7, 8). According to Mr. Reif, his practice over the last thirty years has been concentrated in the area of federal employment law, including a number of employment discrimination cases and cases involving wage law and constitutional claims. (Id. ¶¶ 9-11).

Beth M. Margolis, also a partner at GR&M, billed 11.30 hours on the case[13] at the rate of $330.00 per hour. (Malloy Decl. ¶ 59). Ms. Margolis graduated from New York University Law School in 1983, served as a law clerk in the district court in New Jersey, and worked for the

---

[12]According to Mr. Reif, he actually billed 66 hours on the matter, but is only seeking compensation for 56.40 hours in connection with this fee application. (See Declaration of James Reif, Esq., dated January 30, 2006 ("Reif Decl.") ¶ 3).

[13]Like Mr. Reif, Ms. Margolis is only seeking a fraction of the total hours billed. According to her time records, she actually spent 14.6 hours on the matter, but is only seeking compensation for 10.4 hours in connection with the initial fee application. (See Declaration of Beth M. Margolis, Esq., dated January 30, 2006 ("Margolis Decl.") ¶ 2). Ms. Margolis logged an additional .90 hours in preparation of the fee application for which the plaintiff also seeks compensation. (See Reply Declaration of Margaret A. Malloy in Further Support of Application for Attorneys' Fees and Costs, dated March 17, 2006 ("Malloy Reply Decl.") ¶ 16).

firm of Rabinowitz, Boudin, Standard, Krinsky and Lieberman (the "Rabinowitz firm") following her clerkship. (Margolis Decl. ¶¶ 3, 4). According to Ms. Margolis, while at the Rabinowitz firm, she worked on a number of federal cases involving constitutional, labor, and employment law. (Id. ¶ 5). Following a year during which she taught at New York University School of Law, she joined GR&M in June 1991 and became a partner in 1992. (Id. ¶ 6). Since joining the firm, Ms. Margolis has almost exclusively litigated cases in the areas of labor and employment law, including numerous discrimination claims. (Id. ¶¶ 7, 8). She also routinely handles arbitrations and administrative hearings on behalf of employees and unions, conducts collective bargaining negotiations and provides advice to unions. (Id. ¶ 11). Although she only billed 11.3 hours on this case for purposes of the fee application, Ms. Margolis represents that had the case gone to trial, she would have served as co-counsel with Ms. Malloy. (Id. ¶ 2).

The Transit Authority contends that the rates sought by counsel are unreasonably high when considered in light of several recent fee decisions here in the Eastern District of New York. (Def.'s Mem. at 9-10). Defendant contends that, at most, Ms. Malloy's hourly rate should not exceed $150 per hour,[14] which is the rate found to be reasonable in LaBarbera v. J.E.T. Resources, Inc., 396 F. Supp. 2d 346, 353 (E.D.N.Y. 2005) (approving as reasonable, for legal services in the Eastern District, the rate of $150 per hour for two associates from a small Manhattan firm); see also Murray v. Commissioner of the State of New York Dep't of Educ.,

[14]Actually, defendant argues that the most appropriate rate for Ms. Malloy's time is $50/per hour (see Def.'s Mem. at 13-15), which this Court notes is consistent with rates that some courts find reasonable for paralegal time. See, e.g., Commission Express Nat'l, Inc. v. Rikhy, No. 03 CV 4050, 2006 WL 385323, at *6 (E.D.N.Y. Feb. 17, 2006) (noting that paralegal rates in the Eastern District range from $60 to $75); Cush-Crawford v. Adchem Corp., 94 F. Supp. 2d 294, 302 (E.D.N.Y. 2000) (indicating that the Second Circuit had approved $50 per hour for paralegals), aff'd, 271 F.3d 352 (2d Cir. 2001).

354 F. Supp. 2d 231, 236-37 (E.D.N.Y. 2005) (approving rate of $135 per hour for sole practitioner with four to five years experience). Defendant argues that there are numerous attorneys in the area who "would leap enthusiastically at the chance to handle a case such as Mr. Greenberg's for $150/hour (or less)."[15] (Def.'s Mem. at 11). As for Mr. Reif and Ms. Margolis, the Transit Authority contends that instead of receiving compensation at the rates of $410 per hour and $330 per hour respectively, the fee award should compensate their time at the rate of no more than $250 per hour. (Def.'s Mem. at 15) (citing LaBarbera, 396 F. Supp. 2d at 353).

The Second Circuit has indicated that courts may consider evidence of prevailing rates for similar services beyond the fee application itself. See Chambless v. Masters, Mates & Pilots Pension Plan, 885 F.2d 1053, 1059 (2d Cir. 1989), cert. denied, 496 U.S. 905 (1990). In addition to the parties' evidentiary submissions, the Court may also consider its own experience and familiarity with the case and with rates generally charged. See Cruz v. Local Union No. 3 of Int'l Bhd. of Elec. Workers, 34 F.3d at 1160 (noting that a "district court's 'choice of rates [is] well within [its] discretion'") (quoting Cabrera v. Jakabovitz, 24 F.3d at 393).

> To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence – in addition to the attorney's own affidavits – that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.

[15]Unfortunately, apart from counsel's bold statement, defendant fails to supply any support for the claim that numerous attorneys were ready and eager to take Mr. Greenberg's case. Defendant has not presented an affidavit from even one of the numerous attorneys who were "leap[ing]" to take the case. Instead, the Court, which has supervised much of the discovery and settlement negotiations in this case, notes that it took Mr. Greenberg over two years to find and persuade GR&M to take on his case in federal court.

Blum v. Stenson, 465 U.S. at 895 n.11.

Indeed, in accordance with the standard set forth in Blum, one factor considered by the courts as evidence of a reasonable rate is the rate charged by comparable attorneys practicing in the same area. See Tsombanidis v. City of W. Haven, Conn., 208 F. Supp. 2d 263, 273 (D. Conn. 2002) (noting that the court is not "precluded from considering affidavit testimony from other attorneys in the same market area"). Here, plaintiff's counsel has submitted declarations from other civil rights attorneys practicing in the Eastern District of New York in support of plaintiff's fee application. Specifically, plaintiff submitted the Declarations of Lewis M. Steel, Esq., of the firm of Outten & Golden LLP, Lee F. Bantle, Esq., of the firm of Bantle & Levy LLP, and Jo Anne Simon, Esq., an attorney in private practice in Brooklyn. These attorneys all attest to the reasonableness of the rates charged by GR&M. (See Malloy Decl., Exs. J-L). In addition, in their Reply papers, GR&M submitted a Declaration from Robert M. Rosen, from the firm of Leeds, Morelli & Brown, P.C., located in Carle Place, New York, attesting to the rates charged by his Long Island firm, which are comparable to those sought here.

Another factor considered by the courts are the rates paid by counsel's fee paying clients. See Crescent Publ'g Group, Inc. v. Playboy Enters., Inc., 246 F.3d 142, 151 (2d Cir. 2001); Luciano v. Olsten Corp., 109 F.3d at 116 (noting that counsel's "actual billing practice" was one of many factors "subsumed within this lodestar calculation"). The rates normally paid by counsel's fee paying clients provide "a strong indication of what private parties believe is the 'reasonable' fee." Crescent Publ'g Group, Inc. v. Playboy Enters., Inc., 246 F.3d at 151 (applying the lodestar method to calculation of attorneys' fees in a suit brought under the Copyright Act); see also Reid v. New York, 584 F. Supp. 461, 462 (S.D.N.Y. 1984) (finding the

attorneys' customary rates to be "their 'market rates'"). In reviewing a trial court's reduction of attorneys rates, the Seventh Circuit noted:

> It is apparent what the district judge's mistake was. He thought he knew the value of the class lawyers' legal services better than the market did. . . . [I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order.

In re Cont'l Ill. Sec. Litig., 962 F.2d 566, 568 (7th Cir. 1992).

To the extent that plaintiff has submitted declarations from other practitioners, the Transit Authority argues that there is nothing to suggest that the rates charged by those attorneys are reasonable, or that any of them have conducted a survey of lawyers in the Eastern District to verify the reasonableness of their rates. (Def.'s Mem. at 14). Defendant also complains that plaintiff's counsel failed to provide information as to the rates GR&M charges its other paying clients. (Def.'s Mem. at 13). In response, GR&M contends that "'Congress did not intend the private but public-spirited rate cutting attorney to be penalized for his public spiritedness by being paid on a lower scale than either his higher priced fellow barrister from a more established firm or his salaried neighbor at a legal services clinic.'" (Pl.'s Reply Mem. at 11) (quoting Save Our Cumberland Mountains v. Hodel, 857 F.2d 1516, 1524 (D.C. Cir. 1988)). Plaintiff contends that because of its commitment to the labor movement and the inability of its clients to pay full rates, GR&M often charges substantially discounted rates to its fee-paying clients. (See Margolis Reply Decl. ¶ 2).[16] In plaintiff's estimation, that does not mean that it should be limited to either those discounted rates or to the one-third figure set forth in counsel's retainer

[16]Citations to "Margolis Reply Decl." refer to the Reply Declaration of Beth M. Margolis, dated March 17, 2006.

fee with the plaintiff.

This Court agrees. First, it is clear that the Court may consider the sworn statements of other counsel as evidence of the rates commonly charged in the community. See Altman v. Port Auth., 879 F. Supp. 345, 353 (S.D.N.Y. 1995) (holding that attorneys' affidavits, coupled with the judge's view of the qualifications, experience, and quality of work of the attorneys before him, were sufficient to establish a reasonable rate for comparable legal work). Here, although defendant criticizes the bona fides of the affidavits submitted by GR&M, defendant has not offered any affidavits of other counsel engaged in a similar type of practice which would contradict the representations as to reasonable fees made by plaintiff's affiants. The only information provided is defendant's counsel's own fee rate that he receives as an attorney working for the Transit Authority.[17] (Def.'s Mem. at 12).

Similarly, the fact that plaintiff's firm may charge its clients at reduced rates does not limit the award of fees to that rate. See, e.g., Covington v. District of Columbia, 57 F.3d 1101, 1111 (D.C. Cir. 1995), cert. denied, 516 U.S. 1115 (1996); Fink v. City of New York, 154 F. Supp. 2d 403, 407 (E.D.N.Y. 2001); Hardrick v. Airway Freight Sys., Inc., No. 98 CV 1609, 2000 WL 263687, at *2-3 (N.D. Ill. Feb. 28, 2000); Lenihan v. City of New York, 640 F. Supp. 822, 828 (S.D.N.Y. 1986). Instead, the rate charged by plaintiff's counsel is only one factor that the Court may consider in determining what the appropriate rates should be.

In further support of its fee application, GR&M has cited several civil rights cases in which members of its firm were awarded fees at the prevailing rates. See, e.g., Moses v. New

[17]On the other hand, plaintiff notes that the NYCTA is regularly represented by Proskauer Rose, LLP, which bills at a much higher rate than is paid to Transit Authority in-house counsel. (See Pl.'s Reply Mem. at 5; Margolis Reply Decl. ¶ 6).

York City Transit Auth., No. 01 CV 4280, 2003 WL 22939122, at *3-4 (S.D.N.Y. Dec. 12, 2003) (awarding fees at the rates of $350 per hour for the partner's time, $175 per hour for Ms. Malloy, and $75 per hour for paralegal time);[18] see also Ayres v. 127 Rest. Corp., No. 96 CV 1255, 1999 U.S. Dist. LEXIS 7935, at *5-6 (S.D.N.Y. May 21, 1999) (awarding $275 for partners, $185 for senior associates, and $125 for junior associates). Furthermore, plaintiff argues that, given the increase in the Consumer Price Index ("CPI") from January 1990 to November 2005, the rates charged by GR&M are reasonable in that they account for the rise in the CPI. (See Malloy Reply Decl. ¶ 5; Ex. A).

The Court is familiar with the range of rates commonly awarded in this district. In effect, the rates advocated by the Transit Authority are those that have been applied in the context of default motions. See, e.g., Schwartz v. Chan, 142 F. Supp. 2d 325, 332 (E.D.N.Y. 2001) (finding that $175 per hour was a reasonable rate in action resulting in default judgment); Walia v. Vivek Purmasir & Assocs., Inc., 160 F. Supp. 2d 380, 382 (E.D.N.Y. 2000) (increasing from $175 per hour to $200 per hour the rate for a sole practitioner in gender discrimination litigation resulting in default judgment). Even in cases that are several years old,[19] courts in this district have awarded rates higher than, or comparable to, those advocated by the defendant in this case. See, e.g., Leibovitz v. New York City Transit Auth., No. 95 CV 3860, 1999 WL 167688, at *1 (E.D.N.Y. Feb. 25, 1999) (awarding rate of $300 per hour to experienced attorney in

---

[18]Ms. Malloy notes that in this case, where the fee application was submitted in 2002, the Transit Authority did not challenge the rates requested for either Ms. Malloy or the paralegal. (See Malloy Reply Decl ¶ 2).

[19] In awarding fees, courts should use "'current rather than historic hourly rates.'" Gierlinger v. Gleason, 160 F.3d 858, 882 (2d Cir. 1998) (quoting Missouri v. Jenkins, 491 U.S. 274, 284 (1989)).

employment discrimination litigation), rev'd on other grounds, 252 F.3d 179 (2d Cir. 2001); Greenridge v. Mundo Shipping Corp., 60 F. Supp. 2d 10, 12–13 (E.D.N.Y. 1999) (finding that reasonable rates in the Eastern District range from $200 to $225 for partners, $200 for senior associates, and $100 for junior associates for work performed in connection with a remand proceeding) (citing Perdue v. City Univ. of New York, 13 F. Supp. 2d 326, 345–46 (E.D.N.Y. 1998)). Rates do not remain stagnant, however, and as one court in this district noted when awarding a rate of $400 per hour for a partner in a case brought in Suffolk County: "when reviewing caselaw that comments on prevailing market rates, a court must take into account the rapidity with which such rates can rise. Thus, a case decided even as recently as 2000 could be out of date as far as the rates are concerned." Tokyo Electron Ariz., Inc. v. Discreet Indus. Corp., 215 F.R.D. 60, 64 (E.D.N.Y. 2003).

Furthermore, while the cases cited by defendants support a drastically reduced fee rate for cases in which defaults have occurred, much higher rates have been ordered as appropriate for experienced attorneys in larger firms dealing with more complex issues or areas of specialized practice. See, e.g., Duke v. County of Nassau, No. 97 CV 1495, 2003 WL 23315463, at *2-3 (E.D.N.Y. Apr. 14, 2003) (applying a rate of $300 per hour in calculating a fee award for an experienced civil rights trial attorney and awarding the mid-level associates fees at $225 and $175 per hour); General Motors Corp. v. Villa Marin Chevrolet, Inc., 240 F. Supp. 2d 182, 188 (E.D.N.Y. 2002) (construing both statutory and contractual entitlement to fees and finding to be reasonable hourly rates of between $315 and $375 for partners, $225 and $295 for senior associates and $140 to $225 for junior associates); Weil v. Long Island Sav. Bank, 188 F. Supp. 2d 265, 269 (E.D.N.Y. 2002) (finding counsel's "customary rates" of $371 to $450 per hour for a

senior partner to be justified in a consumer class action); see also M.L ex rel. M.P. v. Board of Educ. of the City of New York., No. 02 CV 4288, 2003 WL 1057476, at *2–3 (S.D.N.Y. Mar. 10, 2003) (awarding fees of $350 to $375 per hour for lead counsel, and $225 per hour for associates, in administrative challenge to educational program for disabled child).

Moreover, in New Leadership Committee v. Davidson, a case decided in 1998 and awarding fees for work performed beginning in 1997, the district court approved as reasonable rates of $275 per hour for the partner, $200 for an experienced associate, $150 for a less experienced associate and $65 for law students. 23 F. Supp. 2d 301, 303–04 (E.D.N.Y. 1998). Other cases in this district have approved similar rates. See Nicholson v. Williams, No. 00 CV 2229, 2004 WL 4780498, at *10-12 (E.D.N.Y. Apr. 5, 2004) (awarding a rate of $300 per hour for the parties' time on the case after stating that several decisions in 2002-2003 approved hourly rates of $250 per hour for non-trial work and $300 per hour for trial work in civil rights litigations) (citations omitted); King v. JCS Enters., Inc., 325 F. Supp. 2d 162, 169-70 (E.D.N.Y. 2004) (finding $295 to be a reasonable rate for an experienced senior partner in ERISA litigation); Tokyo Electron Ariz., Inc. v. Discreet Indus. Corp., 215 F.R.D. at 64 (finding to be reasonable rates of $280 for senior associates).

Although the relevant market for evaluating the reasonableness of an attorney's fee has been described as the Eastern District of New York, this Court has previously questioned the wisdom and fairness of utilizing a "prevailing rate" that differs on average by more than $100 per hour depending on which side of the Brooklyn Bridge the court sits. See Nicholson v. Williams, 2004 WL 4780498, at *10 (citing New York State Nat'l Org. for Women v. Pataki, No. 93 CV 7146, 2003 WL 2006608, at *2 (S.D.N.Y. Apr. 30, 2003) (stating that "after

reviewing recent fee awards [for complex civil rights cases] litigated by small firms, the court finds that . . . rates of $430.00 and $400.00 per hour . . . are on the high end but still within a reasonable range" for attorneys in the Southern District, little more than a mile away from the Eastern District).

Here, the fees charged by counsel are on par with those charged in civil rights cases brought in the Southern District several years ago. See, e.g., M.L. ex rel. M.P. v. Board of Educ. of the City of New York, No. 02 CV 4288, 2003 WL 1057476, at *2–3 (S.D.N.Y. Mar. 10, 2003) (awarding fees of $350 to $375 per hour for lead counsel and $225 per hour for associates in administrative challenge to educational program of disabled child); Davis v. New York City Hous. Auth., No. 90 CV 628, 2002 WL 31748586, at *2–3 (S.D.N.Y. Dec. 6, 2002) (awarding $375 per hour in complex civil rights litigation for an attorney with more than 15 years of experience); Gonzalez v. Bratton, 147 F. Supp. 2d 180, 212 (S.D.N.Y. 2001) (awarding $390 per hour for lead attorney in a small firm in the Southern District); Knoeffler v. Town of Mamakating, 126 F. Supp. 2d 305, 311 (S.D.N.Y. 2000) (finding $300 to be an appropriate rate for a lead attorney); Marisol A. v. Giuliani, 111 F. Supp. 2d 381, 386 (S.D.N.Y. 2000) (finding that reasonable fees for attorneys in child welfare civil rights litigation in the Southern District are $350 per hour for attorneys with more than fifteen years of experience, $300 per hour for attorneys with ten to fifteen years of experience, $230 to $250 per hour for attorneys with seven to nine years of experience, $180 to $200 for attorneys with four to six years of experience, and $130 to $150 per hour for attorneys with one to three years of experience); Rodriguez v. McLoughlin, 84 F. Supp. 2d 417, 423 (S.D.N.Y. 1999) (applying a rate of $425 per hour for the partner and $240 per hour for a fifth year associate in a civil rights action).

"In the civil rights area, Congress has instructed the courts to use the broadest and most effective remedies available to achieve the goals of our civil rights laws." See Mid-Hudson Legal Servs., Inc. v. G & U, Inc., 578 F.2d 34, 37 (2d Cir. 1978) (collecting cases) (stating that the fee shifting provision in Section 1988 must therefore "be applied broadly to achieve its remedial purpose"). The issues raised in this case, alleging discrimination by the Transit Authority, could just as easily have been raised in suits brought in Manhattan or the Bronx. The court is troubled by the suggestion that counsel would be entitled to fees paid at a rate of up to $100 more an hour had the suit been brought across the river, in the Southern District of New York, but that the fee award should be less simply because venue lies in the Eastern District.

In a similar vein, other courts in the Eastern District have recognized that "it is not improper or unreasonable to apply Southern District rates to litigation in this district, at the judge's discretion, even if the litigation has taken place not in Brooklyn, a borough of New York City, but in Central Islip, a satellite courthouse of the Eastern District." Tokyo Electron Ariz., Inc. v. Discreet Indus. Corp., 215 F.R.D. at 63 (applying rates of $280 per hour for a senior associate, $180 per hour for junior associates, and $110-$115 for paralegals, while reducing the partner's rate from $510 per hour to $400). As the Court in New Leadership Committee v. Davidson noted, caselaw limiting a court's analysis of prevailing rates to the federal district in which that court is located "should not be read so strictly as to create an unreasonable disincentive for Manhattan-based attorneys to bring . . . suits in Brooklyn," suggesting that "it is not necessarily improper to consider what is occurring minutes away across the East River." 23 F. Supp. 2d at 305. The district court in New Leadership Committee thus concluded that courts in the Eastern District may consider attorney fee rates awarded in the Southern District, as "it is

within the court's broad discretion to consider the unique circumstances of lawyers in New York City who practice in two different federal jurisdictions within the same city." Id. Indeed, the Second Circuit in A.R. v. New York City Department of Education, while recognizing that different rates may apply in the Southern and Eastern Districts of New York, also acknowledged that:

> If [rates] are lower than those in another district, skilled lawyers from such other district will be dissuaded from taking meritorious cases in the district with lower rates. If lawyers are paid for their participation in IDEA proceedings that clearly arise in Queens at a rate considerably lower than what they are paid for representation in proceedings that clearly arise in Manhattan, experienced, Manhattan-based lawyers . . . may decide to devote their time and expertise to IDEA cases that arise in Manhattan rather than those cases in which parents are equally needful of their services, but that arise in Queens.

407 F.3d 65, 80-81 (2d Cir. 2005). Thus, the Court made it clear that it was not setting "a crisp rule." Id. at 81.

Having reviewed the various cases cited by both parties, and being familiar with the prevailing rates in the community through the numerous fee applications reviewed by this Court, see Association for Retarded Citizens of Conn., Inc. v. Thorne, 68 F.3d 547, 554 (2d Cir. 1995) (holding that a court may "'rely in part on [its] own knowledge of private firm hourly rates in the community'") (internal citation omitted), it is clear that the range of "reasonable" attorney fee rates varies depending on the type of case, the nature of the litigation, the size of the firm, and the expertise of its attorneys. Here, the Court has considered not only the statements of other counsel, but also the findings of the courts in Moses v. New York City Transit Authority, 2003 WL 22939122, and Ayres v. 127 Restaurant Corp., 1999 U.S. Dist. LEXIS 7935, as instructive. Although Ms. Malloy had only been practicing for GR&M for one year before taking on this

case, she has an excellent background and had prior litigation experience. While this Court finds that the rate of $235 per hour that Ms. Malloy charged is slightly higher than the average fees charged by attorneys of similar skills in similar cases in this legal community, the Court declines to reduce the rate to $150 per hour, concluding instead that $185 per hour is a reasonable rate to be applied for Ms. Malloy's time on this case.[20] Furthermore, the appropriate rates to be applied to Mr. Reif's and Ms. Margolis' time billed on this case are $350 and $300 per hour, respectively.[21]

Despite defendant's contention that the firm's paralegal rate is too high (Def.'s Mem. at

---

[20]Defendant cites a recent decision of this Court in which an associate who worked on a difficult case involving the Individuals with Disabilities in Education Act ("IDEA") was awarded fees at the rate of $150 per hour. See C.B. and R.B. ex rel. W.B. v. New York City Dep't of Educ., No. 02 CV 4620, 2006 U.S. Dist. LEXIS 68649, at *39 (E.D.N.Y. Sept. 25, 2006). However, in that case, the Court specifically noted that a higher rate was not justified by "any special circumstances." Id. By contrast, the associate in the instant case logged almost all of the hours billed on the case, and was responsible for handling most of the critical legal work related to the case. From this Court's own involvement in the supervision of the case prior to the summary judgment motions, Ms. Malloy produced work of a caliber that far surpassed her years of experience. (See Malloy Decl. ¶ 59; Ex. H; Malloy Reply Decl. ¶ 16; Ex. D). The Court finds these circumstances sufficiently special to merit a slightly higher rate. Furthermore, the associate in C.B. had been practicing for less than a year before she began billing her time on the case. See C.B. and R.B. ex rel. W.B. v. New York City Dep't of Educ., 2006 U.S. Dist. LEXIS 68649, at *15, 23 n.8. Ms. Malloy, on the other hand, was considered a second-year associate when she began billing her time on the case, as she had clerked for a year before joining GR&M in the fall of 2000. (Malloy Decl. ¶¶ 61, 62; Ex. H).

[21]Defendant notes that "[i]t is generally accepted that small firms (and solo practitioners) have lower 'reasonable' hourly rates than larger firms." (Def.'s Mem. at 10 n.6). However, in McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund, the Second Circuit cautioned that "district courts should not treat an attorney's status as a solo practitioner as grounds for an automatic reduction in the reasonable hourly rate" used in the lodestar calculation. 450 F.3d 91, 97-98 (2d Cir. 2006) (affirming the district court's fee award while noting that "[o]verhead is not a valid reason for why certain attorneys should be awarded a . . . lower hourly rate" and that the "focus of the inquiry . . . must instead be determined by reference to the 'prevailing [rates] in the community for similar services by lawyers of reasonably comparable skill, expertise, and reputation'") (internal citation omitted).

15-16), the Court finds the proposed rates to be reasonable, and respectfully recommends that paralegal time be compensated at $80 per hour. See, e.g., Aiello v. Town of Brookhaven, No. 94 CV 2622, 2005 WL 1397202, at *7 (E.D.N.Y. June 13, 2005) (awarding fees for paralegal time at the rate of $100 per hour, where no information was provided regarding the paralegal's skill or experience, after noting the "complexity of the case, its inherent risks, and the exceptional results achieved"); S.W. ex rel. N.W. v. Board of Educ., 257 F. Supp. 2d 600, 607-08 (S.D.N.Y. 2003), aff'd, 407 F.3d 65 (2d Cir. 2005) (noting that "[p]aralegals typically are billed at $75 per hour, unless they have significant experience"); Marisol A. v. Giuliani, 111 F. Supp. 2d at 388 (determining that a paralegal rate of $75 per hour "appear[ed] reasonable" in child welfare civil rights litigation).

In finding these rates to be reasonable, the Court acknowledges its departure from the rates cited in various cases included in defendant's opposition papers. (See Def.'s Mem. at 9-10). However, the fact-specific nature of the reasonableness inquiry, coupled with the Court's noted dissatisfaction with the widely disparate rates awarded in the Southern and Eastern Districts, merits this departure.

D. Hours Expended

Defendant also challenges the reasonableness of the hours expended by counsel in representing Mr. Greenberg, contending that the firm's hours are "Grossly Excessive" and demonstrate "an abandonment of good billing judgment." (Def.'s Mem. at 16). Defendant argues that the firm "unnecessarily" drafted the Second Amended Complaint, "engaged in a modest amount of discovery," made a "partially successful summary judgment motion" and then

settled the case. (Id.) Additionally, the Transit Authority claims that it should not be responsible for any time logged by plaintiff's counsel in drafting and/or discussing the plaintiff's retainer agreement.[22] (Id. at 17). All tolled, defendant contends that, at most, Ms. Malloy should have spent between 250 and 300 hours litigating the case, not the over 1,000 hours actually billed. (Id. at 16).

The Second Circuit has held that any attorney who seeks compensation through the courts "must document the application with contemporaneous time records. These records should specify, for each attorney, the date, the hours expended, and the nature of the work done." New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983); see also Lewis v. Coughlin, 801 F.2d 570, 577 (2d Cir. 1986); Louima v. City of New York, No. 98 CV 5083, 2004 WL 2359943, at *81 (E.D.N.Y. Oct. 5, 2004), aff'd, 163 Fed. Appx. 70 (2d Cir. 2006). The records must be maintained with sufficient specificity "to enable the Court to determine whether the hours billed were duplicative or excessive." Dailey v. Societe Generale, 915 F. Supp. 1315, 1328 (S.D.N.Y. 1996), aff'd in relevant part, 108 F.3d 451 (2d Cir. 1997).

The law is clear that when reviewing a fee application, the court "should exclude excessive, redundant or otherwise unnecessary hours." Quaratino v. Tiffany & Co., 166 F.3d at 425 (citing Hensley v. Eckerhart, 461 U.S. at 434). In evaluating time sheets and expense records, some courts have dealt with the problem posed by excessive or redundant billing by simply subtracting the redundant hours from the amount of hours used to calculate the lodestar.

---

[22]This includes 0.60 hours logged by Mr. Reif in drafting the retainer agreement and 0.10 hours logged by Ms. Malloy in later discussions with the plaintiff concerning the agreement. (Id. at 17).

See, e.g., Fernandez v. North Shore Orthopedic Surgery & Sports Med., P.C., No. 96 CV 4489, 2000 WL 130637, at *6; see also Ruggiero v. Krzeminski, 928 F.2d at 564 (affirming the lower court's decision to subtract 32 hours for irrelevant research and for work performed on post-trial motions before calculating the lodestar).

However, the Second Circuit has stated that the district court is not required to "set forth item-by-item findings concerning what may be countless objections to individual billing items." Lunday v. City of Albany, 42 F.3d 131, 134 (2d Cir. 1994); see also Daiwa Special Asset Corp. v. Desnick, No. 00 CV 3856, 2002 WL 31767817, at *5 (S.D.N.Y. Dec. 3, 2002) (reducing fee request of $2.2 million by 50% due in part to excessive billing). Particularly where the billing records are voluminous, "it is less important that judges attain exactitude, than that they use their experience with the case, as well as their experience with the practice of law, to assess the reasonableness of the hours spent." Amato v. City of Saratoga Springs, 991 F. Supp. 62, 66 (N.D.N.Y. 1998) (citing Clarke v. Frank, 960 F.2d 1146, 1153 (2d Cir. 1992)). Furthermore, the court in Daiwa Special Asset Corp. v. Desnick recognized that what may be "reasonable attorneys' fees and expenses in the context of an order requiring a losing party in a litigation to pay the prevailing party "is not the same as the reasonableness of a bill that a law firm might present to its own paying client." 2002 WL 31767817, at *2 (citing Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986)). Thus, "[i]n calculating the number of 'reasonable hours,' the court looks to 'its own familiarity with the case . . . and its experience generally as well as to the evidentiary submissions and arguments of the parties.'" Clarke v. Frank, 960 F.2d at 1153 (internal citations omitted).

Accordingly, some courts have used percentage reductions "as a practical means of

trimming fat from a fee application." New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d at 1146 (finding percentage reductions to be an acceptable means for reducing fee applications); see also Tokyo Electron Ariz., Inc. v. Discreet Indus. Corp., 215 F.R.D. at 64–65 (applying 10% reduction to excessive fee application); Rotella v. Board of Educ. of the City of New York, 2002 WL 59106, at *3–4 (applying percentage reduction to fees of several attorneys for excessive and redundant billing); Quinn v. Nassau County Police Dep't, 75 F. Supp. 2d 74, 78 (E.D.N.Y. 1999) (reducing one attorney's fees by 20%, and another attorney's fees by 30%, for unnecessary and redundant time); Perdue v. City Univ. of New York, 13 F. Supp. 2d at 346 (imposing a 20% reduction for redundancy); American Lung Ass'n v. Reilly, 144 F.R.D. 622, 627 (E.D.N.Y. 1992) (finding that "the use of so many lawyers for relatively straightforward legal tasks was excessive and led to duplication of work," and deducting 40% of plaintiffs' hours).

Defendant points to several examples of excessive hours billed. For example, defendant notes that Ms. Malloy spent close to 29 hours drafting the First Amended Complaint, almost 16 hours drafting the Second Amended Complaint, 15 hours responding to an objection by the NYCTA to certain discovery requests, and almost 18 hours preparing to take "a simple deposition that lasted half a day." (Def.'s Mem. at 16-17). Defendant also contends that it should not be responsible for time spent drafting and discussing the retainer agreement with Mr. Greenberg. (Id. at 17). Given what it considers an excessive number of hours logged, defendant urges an across-the-board reduction in the number of hours billed and argues that counsel should

not receive compensation for more than 300 hours worth of attorneys' time. (Id. at 18).[23]

Plaintiff contends that out of the 1,146.95 hours requested, defendant has identified a total of only 78 hours that it deems excessive. (Pl.'s Reply Mem. at 13). Plaintiff argues that defendant has not offered any information as to what a reasonable amount of time would have been for the tasks complained of, nor has defendant proffered evidence as to the time spent by its counsel on similar tasks. (Id.) Plaintiff further contends that although he offered to settle this action early in its history, the Transit Authority "litigated this case aggressively;" had it agreed to plaintiff's settlement demand, lodged prior to obtaining counsel, there would be no issue concerning attorneys' fees. (Id. at 14).

Having carefully reviewed the plaintiff's counsel's time records, the Court rejects defendant's contention that, at most, plaintiff's counsel should have spent 300 hours on this case. In the first place, defendant has provided no support for its proposition that this number of hours, which represents less than one-third of the hours sought, is reasonable under the circumstances of this case. As for the Transit Authority's complaint that there was no need for counsel to amend the complaint (Schoolman Decl. ¶ 8; Def.'s Mem. at 16-17), the Court disagrees. The original complaint filed by plaintiff pro se was simply the standard Eastern District form complaint alleging a violation of the ADA. (Malloy Reply Decl. ¶ 7; Ex. B). The First Amended Complaint added detailed factual allegations, not contained in the original complaint, and included claims under the NYSHRL and NYCHRL, as well as a claim for emotional distress damages. (See id., Ex. C). The Second Amended Complaint added additional factual assertions,

---

[23]Defendant also argues that a fee reduction is warranted in light of the "limited" success achieved (id. at 19-21; see supra at 10), and because of vague billing entries. (Id. at 18-19; see infra at 32).

and alleged not just discrimination based on disability, but also retaliation based on plaintiff's protected activities. (See Malloy Decl., Ex. A).

As noted previously, defendant objects to time spent by plaintiff preparing a response to defendant's objection to an Order of the Court allowing plaintiff to reopen discovery to take one deposition and to the time it took to prepare for the one deposition that counsel was permitted to take.[24] Given the importance of these tasks to the litigation, the need to take this deposition, and the amount of material to be covered by this 30(b)(6) witness, the Court finds the time spent to have been reasonable.

Overall, the time recorded in plaintiff's initial fee application appears only slightly higher than one would anticipate in a case of this nature. However, having supervised the discovery in this case since its inception, and being familiar with the numerous efforts made by this Court throughout to resolve the matter, the Court agrees with the comment made by Judge Eaton in Petrovits v. New York City Transit Authority, No. 95 CV 9872, 2004 WL 42258, at *1, 7 (S.D.N.Y. Jan. 7, 2004). There, the court concluded that a significant portion of fees was caused "by defendant's unwise litigation tactics," where "[d]espite the relatively modest maximum exposure, the defendant litigated this case to the hilt, vastly increasing the time spent by the attorneys for both sides." Id. Here, defendant fought plaintiff's counsel's requests for discovery at almost every turn. While the Court clearly does not object to counsel's vigorous defense of his client, it would be unfair to deny the prevailing plaintiff fees for work invested in successfully responding to such litigation tactics. The Court agrees, however, that the Transit

[24]The plaintiff notes that although there was only supposed to be one deposition, a second became necessary when the first witness stated that he had not participated in the decision to terminate plaintiff's employment. (Malloy Reply Decl. ¶ 11).

Authority should not be responsible for time that plaintiff's counsel spent drafting or discussing the retainer agreement with the plaintiff, and will accordingly deduct those hours before conducting its final lodestar calculation. See, e.g., Barrett v. West Chester Univ. of Pa. of the State System of Higher Educ., No. 03 CV 4978, 2006 WL 859714, at *7 (E.D. Pa. Mar. 31, 2006) (holding that the defendant should not have to pay for "time spent on formalizing the attorney-client relationship").

In Ms. Malloy's Reply Declaration, the firm seeks an additional $11,727.50 for time that she and Ms. Margolis[25] logged after the initial fee application was submitted. This time includes 48.30 hours billed by Ms. Malloy and .90 hours billed by Ms. Margolis, time largely spent in researching and responding to the Transit Authority's brief in opposition to the fee request. (See Malloy Reply Decl. ¶ 16; Ex. D). Although counsel is allowed to seek fees for preparation of the fee application, "the amount of time spent on a fee submission must be reasonable." Upjohn Co. v. Medtron Labs., Inc., No. 87 CV 5773, 2005 WL 3078232, at *1 (S.D.N.Y. Nov. 16, 2005) (finding the 137.1 hours spent preparing the fee application to be unreasonable); see also DiFilippo v. Morizio, 759 F.2d at 236 (finding the 42 hours spent on the fee application to be unreasonable as a matter of law). After reviewing the papers submitted, the Court finds that the number of hours requested – 50.2 hours totaling $11,727.50 – is excessive. Therefore, the Court respectfully recommends that the total number of hours billed for preparation of the fee application be reduced by 20%.

E. Vague Entries

[25]The hours billed on the fee application also include one hour billed by a paralegal.

Defendant also complains that the firm's time records contain "cryptic, or certainly non-specific, descriptions," and sometimes even combine various tasks into a single entry, in a way that prevents the court from determining whether the time spent was reasonable and therefore compensable. (Def.'s Mem. at 18-19). By way of example, defendant cites entries such as "research claims," "Research ADA claims," "review documents," "research claims and statutes of limitations," and "t/c with plaintiff." (Id. at 18). In its estimation, this type of record-keeping merits a 30% reduction of the lodestar amount. (Id. at 19). In response, plaintiff argues that while defendant has identified six instances of allegedly inadequate entries, counsel's records as a whole satisfy the Carey standard. (Pl.'s Reply Mem. at 14-15). The plaintiff further contends that, when "[v]iewed in context, the entries Defendant challenges are not the least bit vague." (Id. at 16).

Courts have reduced fee awards where the billing entries were overly vague. See, e.g., F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d at 1265 (rejecting entries for "Rev. Docs" and "Clients re testimony"); Amato v. City of Saratoga Springs, 991 F. Supp. at 65-66 (reducing award for vagueness due to entries such as "review discovery response," "prepare deposition questions," and "review research"); Dailey v. Societe Generale, 915 F. Supp. at 1328 (stating that entries such as "'telephone call,' 'consultation,' and 'review of documents' are not sufficiently specific so as to enable the Court to determine whether the hours billed were duplicative or excessive"); Pressman v. Estate of Steinvorth, 886 F. Supp. 365, 367-68 (S.D.N.Y. 1995) (denying compensation for entries such as "telephone conversation," "prepare correspondence," or "review of file" where no associated legal matter was specified); Orshan v. Macchiarola, 629 F. Supp. 1014, 1019-20 (E.D.N.Y. 1986) (reducing fees for entries

such as "prepare correspondence" and "review correspondence").

Where the fee application contains numerous vague entries, courts routinely impose an across-the-board reduction for vague entries. See, e.g., DeVito v. Hempstead China Shop, Inc., 831 F. Supp. 1037, 1045 (E.D.N.Y. 1993) (reducing fee request by 40% due, in part, to insufficient descriptions of work performed), rev'd and remanded on other grounds, 38 F.3d 651 (2d Cir. 1994); Cabrera v. Fischler, 814 F. Supp. 269, 290 (E.D.N.Y.) (reducing fees by 30% for vague entries with insufficient descriptions of work performed), rev'd in part and remanded on other grounds, 24 F.3d 372 (2d Cir. 1993), cert. denied, 513 U.S. 876 (1994); Nu-Life Constr. Corp. v. Board of Educ. of the City of New York, 795 F. Supp. 602, 607–08 (E.D.N.Y. 1992) (reducing fees by 30% due in part to lack of specificity in the descriptions of work performed); Meriwether v. Coughlin, 727 F. Supp. 823, 827 (S.D.N.Y. 1989) (finding a reduction of 15% from the fee request warranted based on vague descriptions of work performed).

Having examined plaintiff's counsel's billing records, however, the Court respectfully recommends that no across-the-board reduction be applied. First, the vast majority of the billing records are sufficiently clear as stated. Second, even the items specifically cited by the defendant as vague become sufficiently clear when evaluated in the context of other entries made at or near the time of the challenged entries. See New York v. RAC Holding, Inc., 35 F. Supp. 2d 359, 364–65 (N.D.N.Y. 2001) (holding that time entries may be viewed in the context of surrounding entries); Pascuiti v. New York Yankees, 108 F. Supp. 2d 258, 270 (S.D.N.Y. 2000); Meriwether v. Coughlin, 727 F. Supp. at 827 (stating that "in many instances the context of vague entries is made clearer by entries following it").

F. Costs

In the fee application, plaintiff requests costs in the amount of $8,118.33. (See Malloy Decl., Ex. I). Additionally, the plaintiff seeks an award of $348.62 in costs spent on research, photocopies, and postage in preparation of the fee application. (See Malloy Reply Decl. ¶ 17; Ex. D). Defendant contends that none of these costs should be awarded. In particular, defendant objects to plaintiff's request for reimbursement for computerized research. (See Def.'s Mem. at 22) (citing Morin v. Nu-Way Plastering, Inc., No. 03 CV 405, 2005 WL 3470371, at *5 (E.D.N.Y. Dec. 19, 2005) (denying charges for computerized legal research as "'merely a substitute for an attorney's time that is compensable under an application for attorney's fees and is not a separately taxable cost'") (quoting United States v. Merritt Meridian Constr. Corp., 95 F.3d 153, 173 (2d Cir. 1996))). Defendants argue that not only should this time be deducted, but that the Court, in its discretion, should deny all costs "to send a message" to counsel "not to try, almost unthinkingly, to bill a defendant for everything, whether or not the charge is proper." (Def.'s Mem. at 22-23).

The Second Circuit, in a case more recent than the one quoted by the defendant, has made it clear that such computerized costs are subject to reimbursement. See, e.g., Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany, 369 F.3d at 98 (holding that if the firm "normally bill[ed] its paying clients for the cost of online research services, that expense could be included in the fee award").[26] There, the court stated: "We agree that the use of online research services likely reduces the number of hours required for an attorney's manual search,

[26]GR&M does, in fact, ordinarily bill its computerized research expenses to its clients. (See Pl.'s Reply Mem. at 19-20).

thereby lowering the lodestar, and that in the context of a fee shifting provision, the charges for such online research may be properly included in a fee award." Id.

Accordingly, having reviewed plaintiff's request for costs and found them to be reasonable, the Court respectfully recommends that plaintiff's request for $8,118.33, along with plaintiff's subsequent request of $348.62 for costs incurred in connection with preparing the fee application, be granted.

CONCLUSION

Of plaintiff's request for 1,197.15 hours, the Court respectfully recommends that: (1) Ms. Malloy be compensated at the rate of $185 per hour; (2) Ms. Margolis be compensated at the rate of $300 per hour; (3) Mr. Reif be compensated at the rate of $350 per hour; (4) paralegal time be compensated at the rate of $80 per hour; (5) 0.70 hours be deducted from the lodestar calculation for time billed relative to the retainer agreement; and (6) an across-the-board reduction of 20% be calculated with respect to those hours logged on the fee application. Finally, the Court respectfully recommends that costs be awarded in the amount of $8,466.95. The table set forth in Attachment A shows the resulting computation for the attorneys' fees portion of the award.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within ten (10) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72(b); Small v. Secretary of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to send copies of this Report and Recommendation to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
September 29, 2006

\s\
Cheryl L. Pollak
United States Magistrate Judge

ATTACHMENT A

COMPUTATION OF FEES

FEES REQUESTED	HOURS	BILLED AT	TOTAL $ 286,639.50
TOTAL FEES AWARDED			
Margaret A. Malloy			
Total hours awarded after adjustments for: 1) Billable Hours at Modified Rate			
a) Non-discounted hours[27]	1,044.70	$185/hour	$ 193,269.50
b) Hours on fee applications discounted by 20% to account for excessive hours	38.64	$185/hour	$ 7,148.40
Beth M. Margolis			
Total hours awarded after adjustments for: 1) Billable Hours at Modified Rate			
a) Non-discounted hours	10.40	$300/hour	$ 3,120.00
b) Hours on fee application discounted by 20% to account for excessive hours	0.72	$300/hour	$ 216.00

[27]The total number of hours has been reduced by 0.10 hours to account for time that Ms. Malloy spent discussing the retainer agreement with the plaintiff.

James Reif			
Total hours awarded after adjustments for: 1) Billable Hours at Modified Rate[28]	55.80	$350/hour	$ 19,530.00
Paralegals			
Total hours awarded after adjustments for: 1) Billable Hours at Modified Rate			
a) Non-discounted hours	35.35	$80/hour	$ 2,828.00
b) Hours on fee application discounted by 20% to account for excessive hours billed	0.80	$80/hour	$ 64.00
TOTAL FEES AWARDED			**$ 226,175.90**

[28]The total number of hours has been reduced by 0.60 hours to account for time spent drafting the plaintiff's retainer agreement.