IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-00858-WJM-MEH

EBONIE S., a child, by her mother and next friend, MARY S.,

Plaintiff,

v.

PUEBLO SCHOOL DISTRICT 60,

Defendant.

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiff, Ebonie S., hereby submits her Motion for Attorneys' Fees and Costs, pursuant to 42 U.S.C. § 12205, 29 U.S.C. § 794a(b), Fed.R.Civ.P. 54(d)(2) and D.Colo.L.Civ.R. 54.3. Plaintiff requests an award of attorneys' fees in the amount of $1,161,111.50 and costs and expenses in the amount of $163,658.98, representing amounts incurred through the filing of this motion. Plaintiff reserves the right to submit a supplemental motion for any later fees and costs.

Pursuant to Fed.R.Civ.P. 58(e), Plaintiff requests that the Court enter an order that this motion has the same effect under Fed.R.App.P. 4(a)(4) as a motion timely filed under Fed.R.Civ.P. 59 so that the final judgment cannot be appealed until all issues related to fees and costs are resolved.

Pursuant to D.Colo.L.Civ.R. 7.1(a) counsel have conferred regarding the filing of this motion, and Defendant does not consent to the relief requested.

I. INTRODUCTION AND BACKGROUND

A. The verdict and Defendant's conduct.

The verdict in this case was powerful vindication of the civil rights of a young girl with disabilities. On March 24, 2015, after a six-day trial, the jury returned a verdict in Ebonie's favor, finding that the Defendant, Pueblo School District 60, had intentionally discriminated against her in violation of her federal rights under both Title II of the Americans with Disabilities Act (ADA) and Section 504 the Rehabilitation Act (§ 504). The jury awarded Ebonie $2.2 million for the damage resulting from being locked in her desk in her Special Needs classroom while a kindergarten student at Defendant's Bessemer Academy in the 2006-07 school year.

The conduct that gave rise to the jury's verdict is now well known to the Court. Bessemer Academy had a special education program for children of Severely Limited Intellectual Capacity ("SLIC") that was supposed to be able to teach children like Ebonie. However, during the entire time Ebonie was a student there, the classroom staff regularly locked her in her desk with a wooden bar latched directly behind her, which severely restricted her freedom of movement. Defendant's participation in and sanctioning of this egregious practice under the circumstances here was manifestly discriminatory against the disabled.

First, the locking desks were intentionally constructed and only used by District 60, and only in special education classrooms. No typical child, no matter how ill-behaved, was ever locked in his or her desk. Second, Defendant knowingly allowed the use of the locking desks on disabled children despite the existence of Colorado Department of Education guidelines prohibiting the use of any mechanical restraint

device on any child except in of the event of an emergency. District 60 concedes that Ebonie never posed such a risk but, rather, was locked in her desk for any reason that suited the needs of the classroom staff at the moment, including timeout, punishment, to stay on task, for classroom management and other reasons.

Third, Defendant developed its own policy against mechanical restraint during the same year that Ebonie was being locked in her desk daily. Yet, thereafter, Defendant took no steps to remove the desks or to enforce its policy to protect the students in its District. Defendant did not disseminate its policy against restraint at any time during the year Ebonie attended Bessemer Academy, and the critical training of teachers and other school staff had not occurred as recently as 2010, more than three years after District 60 adopted its policy.

The harm caused to Ebonie was both severe and long-lasting. Ebonie developed a deep-seated fear of authority figures and any educational setting, and has made little or no progress in any measurable area since she left Bessemer Academy, despite having enjoyed school and learning readily prior to that time. Plaintiff's expert, Dr. Helena Huckabee, explained in detail the years of special education, behavioral support, treatment, and other care that is now necessary to slowly unwind the damage and give Ebonie some chance of catching up to where she should already be. It is the life-long cost of these services that form the basis of the jury's $2.2 million award.

Cases such as this are the reason that the ADA and all other civil rights statutes provide for an award of attorney's fees. Protecting civil rights is an important public policy, and fee awards provide an incentive to pursue such cases when the victims seldom can afford the price to be heard. Notably, this case dragged on for so long, in

part, because Defendant never engaged in reasonable settlement negotiations despite numerous opportunities. Defendant never made a settlement offer, taking the position that it might be inclined to do so if Plaintiff first dramatically lowered her own demands. Those demands were far less than what the jury awarded.

B. The Phases of the Litigation.

For purposes of this motion, the case is divided into two phases. The case was filed in April 2009 by the Law Offices of Louise Bouzari (the "Bouzari firm") and discovery proceeded thereafter. Holland & Hart became involved in September 2010. On May 4, 2011, the Court ruled on the Defendants' summary judgment motions, dismissing certain claims against District 60 and dismissing the individual Defendants in their entirety, and thereafter stay the litigation of the remaining claims against District 60 [Dkt. 159, 194]. Thereafter, the Court entered judgment on those claims and [Dkt. 198], Plaintiff's Notice of Appeal was filed on June 15, 2011 [Dkt. 198, 204]. The Tenth Circuit affirmed this Court's rulings, and Ebonie thereafter appealed to the United States Supreme Court. The Supreme Court denied *certiorari* on March 18, 2013, and in early April 2013, Plaintiff's counsel began the work necessary to reopen the case, as well as to explore settlement or mediation.

The approximately two-year period during which the case was on appeal is not included in this Motion, and the significant fees and costs related to the appeals are not included in Ebonie's claim.

The period from the time the Bouzari firm took the case to the beginning of the

appeal period is referred to as "Phase I."[1] The period from April 2013, when trial-related work began again after the Supreme Court denied *certiorari,* through the date of this Motion is referred to as "Phase II."

The principle events that occurred in Phase I were the initial factual investigation, the drafting and filing of the Complaint and Amended Complaint, all discovery, including 25 depositions and written discovery, the negotiation of a protective order, motions to compel, retention of experts and development of expert reports, filing and responding to motions regarding expert opinions under Rule 702, and a two-day evidentiary hearing on the expert challenges. Phase I also included some general trial preparation, but much of that time has been excluded from this Motion, as discussed further below.

Phase II consisted of all of the post-discovery procedural and other matters necessary to prepare and try a jury a trial. The major events included finalizing the final pretrial order, jury instructions and motions in *limine*, attending status conferences, the final pretrial conference, the final trial preparation conference, the hearing on Plaintiff's Motion for Clarification, finalization of exhibit lists, negotiation of exhibit stipulations and objections, supplementation of the expert report of Dr. Huckabee and related deposition, preparation of Opening, Closing, direct and cross-examinations and the enumerable tasks inherent in preparation for a six-day jury trial, the trial, and the work necessary to file this Motion.

[1] The Bouzari firm also represented Ebonie at a six-day administrative due process hearing in 2009 that was a jurisdictional prerequisite to filing this litigation. The costs and fees associated with that hearing were tracked separately and are not included in this Motion. However, certain aspects of the preliminary fact investigation are included, because a factual investigation was necessary due diligence prior to filing the Complaint.

As discussed further below, there is some inherent overlap in the two phases. However, much of the work done during Phase I was not repeated in Phase II. For example, the final pretrial order submitted in Phase II was largely the same as the version submitted in Phase I, much of the legal research and drafting for the motions in *limine* and jury instructions were reused, and the exhibits had already been compiled and exhibit lists completed. Plaintiff's counsel has made diligent efforts to fairly allocate time from Phase I that was beneficial in Phase II, while eliminating significant amounts of time to address any overlap or inefficiency. See The Affidavit of Douglas L. Abbott ("Abbott Aff.") at ¶¶15-26 and the Affidavit of Kate Gerland ("Gerland Aff.") at ¶¶19-27.

Of course, all of the time in Phase I devoted to depositions and other discovery, expert witnesses and 702 hearings applied to Phase II. Those were concluded in Phase I, but equally applicable to Phase II. No aspect of the factual development of the case was affected in any way by the dismissal of certain claims and parties. All of the claims turned on the same operative facts and expert opinions. Therefore, there should be no reduction in fees based on the Court's rulings on summary judgment motions, other than the exclusion of the entire appeal period and other discrete items discussed further below.

C. Attorneys and Law Firms Involved in the Litigation.

The case was initially handled by the Bouzari firm. The Bouzari firm is a 3-attorney firm that specializes in representing children in all aspects of education law. Its practice principally involves administrative hearings rather than complex civil litigation. The Bouzari firm represented Ebonie in the administrative due process hearing in September 2009, and thereafter filed this litigation. The Bouzari firm conducted all of

the depositions and other discovery in Phase I, responded to the summary judgment motions, as well as other motions and procedural matters. The work by the Bouzari firm in Phase I was shared between Louise Bouzari and Kate Gerland, with the assistance of paralegals, as necessary. See Gerland Aff. at ¶¶ 6, 13.

In the Fall of 2010, when it became apparent that the case would not be resolved through mediation or settlement, the Bouzari firm associated with Holland & Hart, LLP, in order to have access to experienced civil litigators and the resources necessary to prepare a case for trial. Holland & Hart's work in Phase I began in September 2010. In addition to general trial preparation matters, Holland & Hart's involvement in Phase I focused on the preparation for the two-day Rule 702 hearing on expert witnesses, and the research and drafting of motions in *limine*, jury instructions, and other pleadings. At about the same time, Ms. Bouzari withdrew from the case to tend to a family medical issue. Ms. Gerland continued to work on the case through trial, and the case preparation and presentation benefited greatly from her extensive knowledge of education law and Ebonie's history, as well as her familiarity with the education of children with disabilities and all aspects of the issues that ultimately became the subject of the expert testimony of Dr. Huckabee.

II. ARGUMENT

The prevailing party under both the ADA and §504 is entitled to recover "a reasonable attorney's fee, including litigation expenses, and costs." 42 U.S.C. § 12205; *see also* 29 U.S.C. § 794a(b) (prevailing party under § 504 is entitled to "a reasonable attorney's fee as part of the costs"). The entitlement to attorney's fees is common under civil rights statutes to encourage attorneys to

take cases to vindicate important rights. *See* 42 U.S.C. § 2000e-5(k) (Civil Rights Act of 1964) and 42 U.S.C. § 1988 (providing for attorney fees in multiple "proceedings in vindication of civil rights," including actions under § 1983). "The ADA, like other civil rights statutes, favors granting attorney fees to the prevailing party as a means to encourage attorney's to police unlawful conduct." *Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, 2014 U.S. Dist. LEXIS 24335, *3-4 (D.Colo. Feb. 26, 2014); *see also Obenauf v. Frontier Fin. Group, Inc.*, 785 F.Supp.2d 1188, 1215 (D.N.M. 2011). To effectuate this policy, the Tenth Circuit has stated that "[t]he primary principle which we must apply is that a 'prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" *Roe v. Cheyenne Mountain Conference Resort, Inc*., 124 F.3d 1221, 1232 (10th Cir. 1997)(quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). In light of the award obtained and the conduct at issue, a fee award in this case would not be unjust.

There can be no dispute that Ebonie was the prevailing party for purposes of an award of fees. A party is considered a prevailing party if he/she "'succeeds on any significant issue in litigation which achieves some of the benefits the parties sought in bringing suit.'" *Carr v. Fort Morgan Sch. Dist.*, 4 F.Supp.2d 998, 1001 (D.Colo. 1988) (*quoting Hensley*, 461 U.S. at 433).

Ebonie easily satisfies the prevailing party standard. The jury found that the Defendant intentionally discriminated against her under both the ADA and § 504, and awarded $2.2 million in compensatory damages, nearly the entire amount sought. As the prevailing party, Ebonie is entitled to recover a fee that

is the product of "'the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate.'" *Colo. Cross-Disability Coal.*, 2014 U.S.Dist. LEXIS 24335 at *4 (*quoting Hensley*, 461 U.S. at 433). The calculation of this so-called Lodestar amount is discussed further below.

The same important policies underlying civil rights statutes like the ADA that favor awards of attorney's fees also favor awarding costs and expenses beyond what would be normally available under 28 U.S.C. § 1920. The ADA provides the recovery of reasonable "litigation expenses, and costs," without further limitation. 42 U.S.C. § 12205. The legislative history of the ADA, and of other civil rights laws, is "replete with references to Congress's intention that civil rights' laws are to be broadly construed, consistent with their remedial purpose." *Hall v. Claussen*, 6 Fed. Appx. 655, 682 (10th Cir. 2001). As a result, the prevailing party in an ADA case may recover costs over and above those provided by the Court's local rules and 28 U.S.C. § 1920. *Corbett v. Nat'l. Prods. Co.*, 1995 U.S. Dist. LEXIS 6425 *12 (E.D. Pa. May 9, 1995) ("[L]itigation expenses" under the ADA is "much broader than the provisions of § 1920.") *see also Chaffin v. Kansas*, 2005 U.S.Dist. LEXIS 2376, *8 (D. Kan. Feb. 17, 2005). The categories and amounts of Ebonie's costs and expenses are set out in Section II. D. below.

A. The Hours Expended by Counsel were Reasonable and Necessary.

"'[T]he most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (*quoting Hensley*, 461 U.S. at 436) In civil rights cases, the Court should focus on the

"'significance of the overall relief obtained by the plaintiff, in relation to the hours reasonably expended on the litigation.'" *Joseph A. by Wolfe v. New Mexico Dep't. of Human Servs.*, 28 F.3d 1056, 1060 (10th Cir. 1994) (*quoting Hensley*, 461 U.S. at 435). In this case, Ebonie succeeded on both claims and was awarded significant compensatory damages. It is immaterial that there were originally other claims asserted that were ultimately dismissed:

> 'In [some] cases, the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead, the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.' Accordingly, *Hensley* emphasized that where that, '"[where] a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee,"' and that '"the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit."'

Riverside v. Rivera, 477 U.S. 561, 569 (1986) (alterations in original) (*quoting Hensley*, 461 U.S. at 435).

Here, the constitutional claims that were dismissed all turned on the same underlying facts as the claims that were tried. Thus, all the depositions, document production, other discovery and pretrial hearings and proceedings applied equally to all claims and would have been necessary even if the dismissed claims had never been asserted. Moreover, fees related to the dismissed claims have been removed, as discussed below. Put another way, other than a smaller set of jury instructions, the trial would have been identical regardless of the number of underlying legal claims.

It is also immaterial whether the fees are in any sense proportional to the damage award. "Although the amount of damages recovered by a plaintiff is relevant to the amount of attorney's fees to be awarded, the U.S. Supreme Court has struck down suggested proportionality requirements." *Garcia v. Tyson Foods, Inc.*, 2012 U.S.Dist. LEXIS 170177, *44 (D. Kan. Nov. 29, 2012) (*citing City of Riverside*, 477 U.S. at 574); *see also Jones v. Eagle-North Hills Shopping Ctr.*, *L.P.*, 478 F.Supp.2d 1321, 1329 (E.D. Okla. 2007) (rejecting mathematical formula which would make the award of attorney's fees proportional to the same ratio of successfully tried issues); *Scott v. City & Cty. of Denver*, 2014 U.S.Dist. LEXIS 9493, *3 (D.Colo. Jan. 24, 2014) ("[T]here is no requirement that the amount of fees awarded to a prevailing party be proportional to the amount of the recovery."). Thus, courts have approved attorney fee requests even where the fee is much larger than the verdict. *See, e.g., Garcia*, 2012 U.S.Dist. LEXIS 170177 at *46 (fee more than twenty times the amount of damages); *Moss v. City of Colo. Springs*, 1986 U.S.Dist. LEXIS 17856, *4 (D.Colo. Nov. 10, 1986) (awarding $159,000 attorney's fee on a $60,000 verdict). Likewise, a fee is not excessive simply by virtue of its size. In *Garcia*, the fee award was in excess of $3 Million. *Garcia*, 2012 U.S.Dist. LEXIS, *46. Likewise, in *Lucas v. Kmart Corp.*, 2006 U.S.Dist. LEXIS 51420 (D.Colo. July 27 2006), the court approved an attorney fee request of $3.25 million. Here, the fee, although significant, is only half the amount the amount award, and smaller than other fees awarded in this district.

There are a number of factors that can be considered in determining whether the hours spent were reasonable. These factors include, "(1) whether the tasks being billed would normally be billed to a paying client, (2) the number of hours spent on each task,

(3) the complexity of the case, (4) the number of reasonable strategies pursued, (5) the responses necessitated by the maneuverings of the other side, and (6) potential duplication of services by multiple lawyers." *Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998) (internal quotations omitted (citation omitted).

A key component of assessing reasonableness is ensuring that the prevailing party's attorneys have exercised "billing judgment." *Colo. Cross-Disability Coalition*, 2014 U.S.Dist. LEXIS at *4-6 (*citing Case v. Unified Sch. Dist. No. 233,* 157 F.3d 1243, 1250 (10th Cir. 1998)). In exercising billing judgment, "[t]he prevailing party must make a 'good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary.'" *Jane L. v. Bangerter*, 61 F.3d. 1505, 1510 (10th Cir. 1995) (*quoting Hensley*, 461 U.S. at 434).

Plaintiff's counsel have diligently exercised billing judgment in this case. Abbott Aff. at ¶¶14-24; Gerland Aff. at ¶¶14-27. Indeed, Plaintiff's counsel have gone far beyond merely removing fees that may be considered simply duplicative, inefficient or otherwise unnecessary, as might occur in any case. Rather, Plaintiff's counsel has eliminated large numbers of hours, and hundreds of thousands of dollars in fees, that would have been billable to a client in the normal course, but which Plaintiff's counsel has, nonetheless, removed in an effort to be reasonable and conservative, and to compensate for the two phases of this litigation. Plaintiff's counsel recognizes that the total number of hours expended in Phase I and II combined is likely greater than the number of hours that would have been expended had the trial occurred at the end of either phase standing alone. As described further below, counsel has accounted for this in a number of ways. A number of time entries have also been voluntarily

eliminated for other reasons. The net result is that, with respect to fees incurred by Holland & Hart, Plaintiff is only claiming about 29% of the total fees incurred during Phase I – a reduction of over 70%. The Bouzari firm has also taken a significant Phase I fee reduction of over $50,000. This reduction, while generous, is justifiably far smaller than Holland & Hart's because the Bouzari firm conducted all of the depositions and discovery in Phase I.

The areas in which counsel have exercised billing judgment or otherwise removed fees from the claim, include the following:

1. **Fees Associated with the due process hearing.** The trial was preceded by a formal, six-day due process hearing. Some of the witnesses who testified in the hearing were not thereafter deposed, including Marilyn Golden and Dr. Phillip Strain. These important witnesses would normally have been deposed at length, but no fees are included for obtaining their sworn testimony at the due process hearing. Additionally, as it relates to the Bouzari firm, the factual investigation and preparation for the due process hearing inevitably reduced the number of hours chargeable to the litigation, if the due process phase had not occurred.
2. **Elimination of the appeal period.** All fees associated with the two year appeal have been eliminated. Abbott Aff. ¶¶15; Gerland Aff. ¶¶20.
3. **The majority of Phase I time incurred by Holland & Hart.** Holland & Hart incurred $402,002.00 in fees during Phase I, but is seeking to recover only $119, 330.00, or about 29% of the total. This reduction is due to a myriad of factors. It eliminates time for general trial preparation largely repeated in Phase II, time associated with the claims that were dismissed, time for clerical tasks and for attorneys who made

smaller, albeit important, contributions to the effort, time spent with trial consultants, and time specifically related to the dismissed individual Defendants, among other things. It also accounts for the substitution of Douglas Abbott for Jonathan Bender as a trial attorney in early 2014. Abbott Aff. ¶¶16.

4. **Multiple attorneys at depositions.** Other than the key depositions of Ebonie's mother, Mary Santos, and Dr. Huckabee, only the time for the attorney taking or defending a deposition has been included. Gerland Aff. ¶¶23.
5. **Travel time.** The depositions required numerous trips between Denver and Pueblo, which has been excluded despite the fact it might normally chargeable to a client. Gerland Aff. ¶¶23.
6. **Time spent on administrative tasks.** Although both law firms made good use of skilled paralegals, a large amount of time devoted to purely administrative tasks have been excluded. Abbott Aff. ¶¶20, 24; Gerland Aff. ¶¶18, 23, 25.
7. **Phase II tasks that benefited from time spent during Phase I.** Many Phase II tasks were completed more efficiently because they had been started in Phase I. Plaintiff entered Phase II with a nearly final exhibits, jury instructions on the remaining claims, demonstrative exhibits, and motions in *limine*. In addition to the drafts of those documents, the underlying legal research had been completed for the most part. Counsel have allocated a reasonable amount of time for work performed in Phase I by including some, but not all, time for those tasks. As it relates to the jury instructions in particular, a larger proportion of Phase I time has been excluded because the original jury instructions also pertained to the dismissed claims. Abbott Aff. ¶19.

After all the significant reductions, counsel's fee is reasonable for the work done and the outcome achieved in such an important case. The level of effort was not duplicative, and would have been billed to a client in the normal course. The hours spent on each task were no greater than in any other case for similar tasks. No tasks were undertaken that were wasted effort or not directly related to achieving the outcome.

B. Counsel's Hourly Rates are Reasonable.

Plaintiff's counsel's hourly rates are also reasonable. The expert opinion of Mari Newman, Esq. that the rates charged are reasonable for in the Denver market for civil rights litigation is set forth in her Affidavit filed with this motion. The rates sought are the same rates that counsel routinely charge and are paid for civil litigation in Denver. Abbott Aff. ¶¶10; Gerland Aff. ¶16. The threshold inquiry in setting a rate for hours reasonably expended is "to determine what lawyers of comparable skill and experience practicing in the area in which the litigation occurs would charge for their time." *Ramos v. Lamm*, 713 F.2d 546, 555 (10th Cir. 1983). Hourly rates are intended to reflect "prevailing rates in the relevant community." *United States ex rel. Berglund v. Boeing Co.,* 2012 U.S. Dist. LEXIS 73552, *24 (D.Or. May 24, 2012). Additionally, "[t]he hourly rate at which compensation is awarded should reflect rates in effect at the time the fee is being established by the court, rather than those in effect at the time the services were performed." *Ramos*, 713 F.2d at 555, *Bratcher v. Bray Doyle Indep. Sch. Dist. No. 42*, 8 F.3de 722, 726 (10th Cir. 1993). The current rates for counsel and paralegals whose fees are sought are as follows:

Holland & Hart, LLP:

Trial Attorneys	
Maureen Witt (Partner)	$530
Douglas L. Abbott (of counsel)	$475
Paralegal	
Jill Nickerson	$220
Other Key Support Attorneys (partners)	
Jonathan Bender	$425
Christina Gomez	$425
Associates	
Cici Cheng	$250
Clarissa Collier	$290
Jason Crow	$295
Anastasia Fainberg	$225
Keeya Jeffrey	$295
Michael Manning	$280
Joseph Neguse	$285

Bouzari firm:

Kate Gerland	$285
Louise Bouzari	$285
Margaret Pflueger	$275
Danna Martin	$150
Desiree Vandelace	$125
Sean Steven	$70

The current hourly rates are the standard rates charged and paid for work performed by these attorneys and paralegals. Actual current billing rates have formed the basis for a fee award. *Reazin v. Blue Cross & Blue Shield, Inc.*, 899 F.2d 951 (983) (10th Cir. 1990). In this case, Defendant was represented by a named partner in a well-established law firm, specializing in education and education-related civil rights litigation. It was, therefore, necessary and justifiable for Plaintiff to obtain the services of law firms and counsel with well-established, complex civil litigation practices, as well as specialization in education law and related issues. Kate Gerland, trial counsel from the Bouzari firm specializes in education law, and has 14 years of experience. To complement that experience, Maureen Witt and Douglas Abbott from Holland & Hart

added 33 and 26 years of experience, respectively, in jury trials and complex civil litigation practice. Louise Bouzari, who was extensively involved during discovery and depositions, also has extensive experience in education law and related issues. Where appropriate, associates were tasked with legal research and drafting to be as efficient as possible. Abbott Aff. ¶12 . In the published decisions that are available, courts in this district have awarded fees in excess of $400 an hour. These decisions date as far back as 2010 and such rates would inevitably be higher today. *See, e.g., Trujillo v. Campbell*, 2012 U.S.Dist. LEXIS 70154, *7-9 (D.Colo. May 21, 2012).

C. Calculation of the Lodestar amount. Multiplying the current billing rates, times the claimed hours (after the deductions and exercise of billing judgment described above), results in a combined Lodestar amount of $1,161,111.50. The detail by law firm and individual is as follows:

Timekeeper	Hourly Rate	No. of Hours	Total
HOLLAND & HART			
Maureen Witt	$530	466.3	$247.059.00
Doug Abbott	$475	510.2	$242,345.00
Jill Nickerson (paralegal)	$220	162.7	$35,794.00
Jonathan Bender	$425	157.2	$66,810.00
Christina Gomez	$425	96.5	$41,012.50
Cici Cheng	$250	10.1	$2,525.00
Clarissa Collier	$290	32.9	$9,541.00
Jason Crow	$295	15.6	$4,602.00
Anastasia Fainberg	$225	9	$2,025.00
Keeya Jeffrey	$295	10	$2,950.00
Michael Manning	$280	51.9	$14,532.00
Joseph Neguse	$285	58.2	$16,587.00

BOUZARI FIRM			
Kate Gerland	$285	1,055.50	$300,319.50
Louise Bouzari	$285	449.90	$128,221.50
Margaret Pfleuger	$275	23.10	$6,352.50
Danna Martin	$150	266.10	$39,915.00
Desiree Vandelae	$125	0.3	$37.50
Sean Steven	$70	6.90	$483.00

D. The Costs Incurred Were Reasonable and Necessary.

As discussed above, in order to promote the important policies underlying the ADA, the "litigation expenses" recoverable under the ADA are "much broader than the provisions of Section 1920." *Corbett*, 1995 U.S. Dist. LEXIS 6425 at *18. Significantly, because the ADA incorporates the expansive remedies of Title VII of the Civil Rights Act of 1991, the ADA provides for "an award of expert witness fees in excess of the per diem amount set forth in 28 U.S.C. § 1821." *Hall*, 6 Fed.Appx. at 682 (42 U.S.C. § 12117 incorporates 42 U.S.C. § 2000e-5(k), which "provides express statutory authority for an award of expert witness fees . . . "); *see also Colo. Cross-Disability Coalition*, 2014 U.S. Dist. LEXIS 24335 at *12-13 (awarding plaintiff's expert fees and reimbursement of other costs because "litigation expenses chargeable under the ADA include expert witness fees" and "all of the expenses for which Plaintiffs' counsel [sought] reimbursement [were] those that would normally be billed to a private client."); *Jones,* 478 F.Supp. at 1329 ("[E]xpert witness fees are to be included in the term 'litigation expenses' in ADA cases.").

The expansive cost recovery permissible in civil rights cases also allows for the recovery of costs for trial consultants, including for a mock trial. Trial consultants serve an important role in ensuring the best possible case presentation – work which would be performed less efficiently by lawyers in any event. As the court observed in *BD v.*

DeBuono, 177 F. Supp. 2d 201, 204 (S.D.N.Y. 2001), "[l]itigation consultants…are trained in various aspects of courtroom practice and procedure. They are consulted by litigators to hone their trial skills in the context of a particular case. It seems to this Court that litigation consultants, used in the manner that plaintiffs' counsel used them here, are the equivalent of additional attorneys or legal para-professionals." Further, the court reasoned that an award of consulting fees would be no different than awarding attorneys' fees at plaintiffs' counsel's hourly rate had they organized a mock trial themselves, or done their own jury consulting research. *Id.* (awarding $135,475.00 for trial preparation consultant fees); *see also Confederated Tribes of Siletz Indians of Or. v. Weyerhaeuser Co.*, 2003 U.S. Dist. LEXIS 25830, *27 (D. Or. Oct. 27, 2003), *aff'd* 411 F.3d 1030 (9th Cir. 2005) (awarding expenditures for mock trials and jury consultants where case was "complex" with "millions of dollars at stake").

In *United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403 (9th Cir. 1990), the Ninth Circuit reversed the district court's order on attorneys' fees because it found that the district court abused its discretion in reducing the number of hours reasonably expended on the litigation, including deducting fees for trial consultants. In that case, the district court "apparently disallowed hours spent on a moot court trial run, and on consultations regarding a jury project related to the case." *Id.* at 407. The Ninth Circuit saw "no reason why these hours [could not] be included in a fee award as long as the number of hours spent was reasonable." *Id.* Here the expenses claimed for using a jury

consultants is only about $45,000, and played a crucial role in trial presentation and strategy.

Courts have also found that other costs and expenses not specifically enumerated in 28 U.S.C. § 1920 are allowable under the ADA because the ADA "provides for litigation expenses and the costs to be awarded in the discretion of the court." *See Lawson v. Robson*, 2005 U.S.Dist. LEXIS 44987 *14 (W.D.Okla. Mar. 24, 2005) (approving computerized legal research and postage costs); *Gilmore,* 2015 U.S.Dist. LEXIS at *18 (approving costs for computerized legal research, Federal Express, long distance calls and messenger services costs); *Corbett*, 1995 U.S.Dist. LEXIS 6425 at *11-12 (approving costs for long distance telephone calls, messenger services, travel, and computerized legal research).

The costs incurred by Holland & Hart and the Bouzari firm are summarized in Exhibit C to the Abbott Affidavit and Exhibit B to the Gerland Affidavit. The supporting documentation is attached to Plaintiff's Proposed Bill of Costs [Dkt. 366]. The bases for claiming the costs and any reductions are set forth in the Affidavits. Abbott Aff. ¶¶27-46 Gerland Aff. ¶¶28-41. All of the costs and expenses for which reimbursement is sought are those that would be normally billed to a client.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court award Plaintiff $1,161,111.50 in fees and $163,658.98 in costs and expenses and enter the requested Order pursuant to Fed.R.Civ.P. 58(e).

Respectfully submitted this 8th day of May, 2015.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2015, I have caused to be electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following email addresses:

Courtney B. Kramer ckramer@sgrllc.com
Thomas S. Rice trice@sgrllc.com

s/ Douglas L. Abbott

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