UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES H., ISRAEL F., AND MALIK Z. on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:21-cv-00997 (CJN)

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF LITIGATION COSTS, INCLUDING ATTORNEYS' FEES

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October 19, 2023

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INTRODUCTION

This is a class action brought in April 2021 by Plaintiffs Charles H., Israel F., and Malik Z. on behalf of themselves and others similarly situated seeking to remedy the systemic failure of Defendants the District of Columbia, Office of State Superintendent of Education, and District of Columbia Public Schools to provide or otherwise ensure the provision of special education and related services to high school students detained in the District of Columbia's Department of Corrections' facilities in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794(a), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, federal and local implementing regulations, and the District of Columbia Human Rights Act (DCHRA), D.C. Code § 2-1401. *See* Second Amended Class Action Complaint for Declaratory, Injunctive, and Other Relief, July 21, 2021, ECF No. 44-3.

On September 25, 2023 the Parties jointly proposed for this Court's approval (ECF No. 193) a judicially enforceable Settlement Agreement (ECF No. 191-1) that requires Defendants to implement significant changes to policy, practices, and procedures and that includes substantial programs for the delivery of contempt and other compensatory education to the Plaintiff Class. In addition to settling the merits, the Settlement Agreement includes the Parties' agreement to settle Plaintiffs' litigation costs, including attorneys' fees and expenses, through the Expiration Date of the Settlement Agreement for $2,500,000. *See* ECF No. 191-1, paras. 151-152. Solely as a compromise to achieve the settlement set forth in the Settlement Agreement, Plaintiffs have agreed

not to seek further litigation costs, including attorneys' fees, for monitoring work undertaken during the term of the Settlement Agreement.[1] *Id.*, para. 152.

Plaintiffs are represented by the public interest firm Terris, Pravlik & Millian, LLP, and non-profit organizations School Justice Project, and the Washington Lawyers' Committee for Civil Rights (collectively, "Class Counsel"). Class Counsel undertook this complex civil rights class action suit without charge to the Plaintiffs. Fees are sought based on the fee-shifting provisions in the statutes under which the case was litigated. The negotiated fee award is to be paid by Defendants and will not come from a common fund or otherwise deplete the recovery for the class.

Plaintiffs respectfully submit that the requested fee award is reasonable and should be approved by the Court. Below, Plaintiffs demonstrate that the total of the lodestar amount of fees—the number of hours that Class Counsel reasonably expended on the litigation multiplied by a reasonable hourly rate—for the work performed July 15, 2020 through December 31, 2022, plus the reasonable expenses incurred during this period, far exceeds the agreed-upon figure of $2,500,000 and thus underscores the reasonableness of the requested fee award. In addition, the fee award is reasonable in light of the time and effort devoted by Class Counsel, the skill and expertise required, the wholly contingent nature of the representation, and the significant recovery obtained for the Plaintiff Class.

[1] Plaintiffs, however, did reserve the right to seek litigation costs, including attorneys' fees, in connection with any enforcement motion filed in Court after the date of Final Court Approval on which they are entitled to all or part of their fees in accordance with applicable law, if Plaintiffs comply with the Settlement Agreement's dispute resolution provisions. ECF No. 191-1, para. 152. The Parties have agreed that Plaintiffs will not be entitled to seek fees on any motion that is denied by the Court, or for which they are not granted any relief, unless that motion is settled in their favor or, as a result of its filing, the District of Columbia voluntarily or unilaterally changes its position on the matter that is the subject of the motion. *Id.*

As required by Rule 23(h)(1), and pursuant to the proposed Class Notice (ECF No. 191-2) and the proposed order submitted with the Parties' Joint Motion To Lift The Stay and for Preliminary Approval of the Settlement Agreement (ECF No. 193-4), Class Counsel, Defendants, and the Clerk of the Court will provide members of the class with notice of this motion and inform them of their opportunity to object to it.

LEGAL STANDARD

Plaintiffs are filing this unopposed motion to satisfy the requirements of Rules 23(h) and 54(d)(2). Rule 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Any such award "must be made by motion under Rule 54(d)(2)," and "[n]otice of the motion must be served on all parties and, for motion by class counsel, directed to class members in a reasonable manner." Fed. R. Civ. P. 23(h)(1).

Even when, as here, the Parties have reached an agreement on the award of litigation costs, federal courts "have a duty to ensure that claims for attorneys' fees are reasonable in light of the results obtained." *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 87 (D.D.C. 2013) (internal citations omitted); *see also* Fed. R. Civ. P. 23, Advisory Committee note to section (h) (2003) ("In a class action, the district court must ensure that the amount and mode of payment of attorney fees are fair and proper whether the fees come from a common fund or are otherwise paid.").

Plaintiffs' fee award is based on the "lodestar" method under which the Court considers "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Id.* at 435.

ARGUMENT

I

PLAINTIFFS ARE THE PREVAILING PARTY AND ARE ENTITLED TO AN AWARD OF LITIGATION COSTS, INCLUDING ATTORNEYS' FEES AND EXPENSES

Class Counsel undertook this complex civil rights class action without charge to the Plaintiffs and, instead, agreed to seek compensation from Defendants pursuant to the fee-shifting provisions in the statutes under which the claims were brought if the Plaintiffs prevailed. *See* Millian Decl., Pl. Ex. 1, para. 3. As a term of the Settlement Agreement, the Parties have agreed to settle Plaintiffs' claim for attorneys' fees and expenses and have negotiated that Defendants will pay Plaintiffs in the amount of $2,500,000 for all litigation costs, including attorneys' fees, through the Expiration Date, except for certain enforcement motions. *See* ECF No. 191-1, paras. 151-152. This fee award is to be paid directly by Defendants and will not come from a common fund or otherwise deplete the recovery for the class.

Plaintiffs brought the class action claims in this case under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794(a), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and the District of Columbia Human Rights Act (DCHRA), D.C. Code § 2-1401. These are fee-shifting statutes which permit the prevailing party to recover "reasonable" attorneys' fees and expenses. *See* 20 U.S.C. § 1415(i)(3)(B)(i)(I); 29 U.S.C. § 794a(b); 42 U.S.C. § 12205; D.C. Code § 2-1403.16(b); D.C. Code § 2-1403.13(a).[2]

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[2] Those provisions state (1) IDEA (20 U.S.C. § 1415(i)(3)(B)(i)(I)): "In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs . . . to a prevailing party who is the parent of a child with a disability"; (2) Rehabilitation Act (29 U.S.C. § 794a(b)): "In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing

Plaintiffs are prevailing parties in this case because the Parties have entered into a judicially enforceable settlement agreement providing them with significant systemic relief. Earlier in the case, Plaintiffs also prevailed in obtaining a preliminary injunction (*see* ECF Nos. 37, 38) and an order finding the Defendants to be in contempt of the preliminary injunction and ordering relief for the Plaintiff class (ECF No. 101). The proposed Settlement Agreement provides for reforms to policies, practices, and procedures that are designed to substantially change and improve Defendants' provision of special education services in the future. *See* ECF No. 191-1, Sections II-IV. The Settlement Agreement also provides for compensatory education relief to the class members in the Compensatory Education Subclass to make up for Defendants' past failures to deliver a free appropriate public education (FAPE). *See id.*, Sections V-VIII. The Court retains jurisdiction to enforce or construe the Settlement Agreement throughout its term. *See id.*, paras. 145, 147, 173, 181. This confers prevailing party status for the purposes of an attorney fee award. *See D.C. v. Straus*, 590 F.3d 898, 901 (D.C. Cir. 2010) (for prevailing party status, "(1) there must be a 'court-ordered change in the legal relationship' of the parties; (2) the judgment must be in favor of the party seeking the fees; and (3) the judicial pronouncement must be accompanied by judicial relief." (quoting *Thomas v. Nat'l Sci. Found.*, 330 F.3d 486, 492-93 (D.C. Cir. 2003))); *see, e.g.*, *Walker v. D.C.*, 798 F. Supp. 2d 48, 51 (D.D.C. 2011) (finding that a plaintiff had obtained prevailing party status when her proposed settlement agreement gave her the relief she sought and was "expressly approve[d]" and incorporated into an order of the administrative judge) (cleaned

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party, other than the United States, a reasonable attorney's fee as part of the costs."; (3) Americans with Disabilities Act (42 U.S.C. § 12205): "the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs . . . ."; (4) D.C. Human Rights Act (D.C. Code § 2-1403.16(b) and D.C. Code § 2-1403.13(a)): "The court may grant any relief it deems appropriate, including," "[t]he payment of reasonable attorneys[']] fees").

up) (citation omitted). Here, while the Settlement Agreement will not be "incorporated into" a court order, if the Settlement Agreement is approved, "the Court shall [enter an order] retain[ing] jurisdiction . . . to make any necessary orders enforcing or construing the Settlement Agreement and to adjudicate any motion(s) pending prior to or at the Expiration Date of the Settlement Agreement, including to order appropriate relief which may include an award of litigation costs, including attorneys' fees, and, if relief is granted, to ensure compliance with any resulting order(s)." ECF No. 191-1, para. 147. Therefore, the Settlement Agreement considered together with the accompanying order will meet the standard that Plaintiffs have obtained judicial relief and are therefore the prevailing party. *See Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Hum. Res.*, 532 U.S. 598, 604 (2001) ("settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees"). While here, there is no consent decree, if the settlement is approved, there will be a court order in which the Court retains jurisdiction to enforce the Settlement Agreement. *See* ECF No. 191-1, para. 147. The Court in *Buckhannon* explained that the Court's retention of jurisdiction to enforce a settlement agreement can confer prevailing party status since there will be "federal jurisdiction to enforce a private contractual settlement." 532 U.S. at 604, n. 7 (citing *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994)). *See* 511 U.S. at 381. Thus, Plaintiffs are entitled to attorneys' fees and expenses as prevailing parties pursuant to the statutes under which they sued.

II

PLAINTIFFS ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES UNDER THE LODESTAR METHOD FOR TIME REASONABLY EXPENDED AT A REASONABLE RATE

"The basic formula for calculating an attorney fee award" involves multiplying "the number of hours reasonably exp[e]nded in litigation" by "a reasonable hourly rate or 'lodestar.'" *See DL v. D.C.*, 924 F.3d 585, 588 (D.C. Cir. 2019) (quoting *Save Our Cumberland Mountains,*

Inc. v. Hodel, 857 F.2d 1516, 1517 (D.C. Cir. 1988)) (cleaned up); *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 546, 551 (2010) (describing the lodestar method).

Below, Plaintiffs demonstrate that the lodestar amount of fees—the number of hours that they reasonably expended on the litigation multiplied by a reasonable hourly rate—for Class Counsel's work performed July 15, 2020 through December 31, 2022 far exceeds the agreed-upon figure of $2,500,000. Thus, the agreed-upon figure is reasonable and should be awarded.

A. PLAINTIFFS ARE ENTITLED TO FEES FOR THE TIME REASONABLY EXPENDED

The Court must determine the amount of time reasonably expended on the litigation. *See Hensley*, 461 U.S. at 434. To support this fee application, Plaintiffs submit Class Counsel's contemporaneous time records of their work directly related to the representation of the class from July 15, 2020 through December 31, 2022. As Ms. Millian explains in her supporting declaration, this period was chosen because it covers the approximate start date of Class Counsel's investigation into the class claims at issue through to the end of the month before Class Counsel provided Defendants with their time records to review during settlement negotiations. However, the Parties have further agreed that this fee award is inclusive of the work that Class Counsel performed and will continue to perform from January 1, 2023 through the Expiration Date of the Settlement Agreement, including the work that it will take to monitor Defendants' compliance with the Settlement Agreement. These additional fees that will necessarily be incurred are encompassed in the settlement and further demonstrate that the amount sought is reasonable.

Terris, Pravlik & Millian's contemporaneous time records organized by category and subcategory are set forth in summary (Pl. Ex. 5) and detail (Pl. Ex. 4). *See also* Millian Decl., Pl. Ex. 1, para. 20 (describing those exhibits). Plaintiffs' Exhibit 1, Millian Decl., paras. 3-8, and Exhibit 8 describe Terris, Pravlik & Millian and the qualifications of their attorneys who performed

the work. Plaintiffs' Exhibit 13 provides the contemporaneous time records of School Justice Project, and Plaintiffs' Exhibit 12, Belle Decl., paras. 3-7, and Exhibit 14 describe the organization and qualifications of their attorneys. Plaintiffs' Exhibit 10 provides the contemporaneous time records of Washington Lawyers' Committee, and Plaintiffs' Exhibit 9, Banner Decl., paras. 3-7 and Exhibit 11 describe the organization and qualifications of their attorneys. Class Counsel has eliminated significant time from their time records in the exercise of billing judgment. *See* Millian Decl., Pl. Ex. 1, para. 19; Belle Decl., Pl. Ex. 12, para. 9; Banner Decl., Pl. Ex. 9, paras. 11.

As demonstrated by these time records, Class Counsel dedicated a significant amount of time and resources to successfully prosecute the case over more than two years of litigation and extensive settlement negotiations prior to reaching an agreement. As described in Ms. Millian's declaration, Class Counsel vigorously pursued this litigation from the outset. Pl. Ex. 1, paras. 14-18. Class Counsel conducted a thorough investigation into the claims, including working with the named Plaintiffs, communicating with dozens of other students and special education advocates with clients at the High School at the D.C. Jail, and hiring and consulting with highly qualified experts in the fields of special education in the correctional setting (Joseph Brojomohun-Gagnon, Ph.D.) and internet technology to support education in correctional facilities (Eden Nelson). *Id.*, paras. 14-18.

During the course of the litigation, the Parties engaged in contentious motions practice, and the fees incurred by Class Counsel were necessarily incurred in the successful prosecution of this case. *See* Millian Decl., Pl. Ex. 1, paras. 16-17. Among other motions, Class Counsel researched, briefed (*see* ECF Nos. 12, 25, 27), and presented oral argument to successfully secure a Preliminary Injunction, in which the Court granted provisional certification of the Plaintiff Class and required the Defendants within 15 days to provide the plaintiff class "with the full hours of

special education and related services mandated by their Individualized Education Programs ('IEPs') through direct, teacher-or-counselor-led group classes and/or one-on-one sessions, delivered via live videoconference calls and/or in- person interactions." Order, ECF No. 37; *see* Mem. Op., ECF No. 38. Subsequently, Class Counsel researched, briefed (ECF Nos. 72, 77, 82, 88), and presented oral argument to successfully hold Defendants in contempt for failing to comply with the Preliminary Injunction, and the Court granted the Plaintiff Class significant compensatory relief. *See* Order ("Contempt Order"), February 16, 2022, ECF No. 101.

After the Contempt finding, the Parties continued to engage in motions practice, including Plaintiffs' motion to enforce the Contempt Order, *see* ECF Nos. 111, 115, 119, and Defendants' motion to clarify or, in the alternative, to modify the Preliminary Injunction and Contempt Orders. *See* ECF Nos. 118, 120. The Parties presented oral argument on these post-Contempt motions. *See* Minute Order of June 21, 2022.

Subsequently, the case was referred to Magistrate Judge G. Michael Harvey for mediation and, between August 2022 and September 2023, the Parties engaged in vigorous, arm's-length settlement negotiations that included a total of 15 mediation sessions. During these sessions, the Parties engaged in extensive negotiations, which at times included client representatives and a relevant third party to gather additional relevant information to evaluate the proposed settlement terms. The Parties exchanged dozens of draft settlement documents. The fourteen months of mediation and settlement negotiations culminated in the proposed Settlement Agreement. *See* ECF No. 191-1. As demonstrated by the course of the litigation, the work of Class Counsel was reasonably expended in the successful prosecution of this case.

B. PLAINTIFFS ARE ENTITLED TO FEES BASED ON PREVAILING MARKET RATES FOR COMPLEX FEDERAL LITIGATION

This is a complex class action, with claims arising under the IDEA, the Rehabilitation Act, Americans with Disabilities Act, and local law. *See* Compl., ECF No. 44-3. In particular, the IDEA, 20 U.S.C. § 1415(i)(3)(C), states:

> Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished.

Class action suits under the IDEA have been treated as complex federal litigation for purposes of awarding fees. *See DL*, 924 F.3d at 592 (D.C. Cir. 2019) (noting the parties and the district court agreed that that IDEA class action qualified as complex federal litigation); *Blackman v. D.C.*, 677 F. Supp. 2d 169, 173 (D.D.C. 2010) (district court noting that the parties agreed that that IDEA class action was complex federal litigation), *aff'd on other grounds*, 633 F. 3d 1088 (D.C. Cir. 2011).

This IDEA class action is no different. As explained above (pp. 4-9) and in Ms. Millian's declaration, this case involves systemic claims that have been litigated vigorously over the course of almost two and a half years; it has involved investigation, informal discovery, contentious motions practice for which Class Counsel has made multiple court appearances, and extensive settlement negotiations. *See* Millian Decl., Pl. Ex. 1, paras. 15-18. Through Class Counsel's work, Plaintiffs have obtained significant systemic relief for the class such as the entry of a Preliminary Injunction (ECF No. 37), a subsequent finding of Contempt (ECF No. 101), and ultimately, the Settlement Agreement lodged with the Court on September 25, 2023. *See* ECF No. 191-1.

Thus, Plaintiffs are entitled to fees based upon market rates for complex federal litigation. *See also Blum v. Stenson,* 465 U.S. 886, 893 (1984) ("It is intended that the amount of fees awarded under [42 U.S.C. § 1988, the Civil Rights Attorney's Fees Awards Act] be governed by the same

standards which prevail in other types of equally complex Federal litigation, such as antitrust cases[,] and not be reduced because the rights involved may be nonpecuniary in nature" (citation omitted.))

As described in the supporting declarations, Class Counsel do not have usual billing rates. Millian Decl., Pl. Ex. 1, para. 4; Belle Decl., Pl. Ex. 12, para. 4; Banner Decl., Pl. Ex. 9, para. 4. In an effort to work towards a timely settlement, Plaintiffs used rates in the LSI *Laffey* Matrix to calculate the lodestar.[3] Millian Decl., Pl. Ex. 1, paras. 11-13. In 2015, in another complex federal litigation, the U.S. Court of Appeals for the D.C. Circuit affirmed an award of attorneys' fees based on the LSI *Laffey* Matrix and found "not illogical" the district court's conclusion that the LSI *Laffey* Matrix "is probably a conservative estimate of the actual cost of legal services in this area." *Salazar v. District of Columbia*, 809 F.3d 58, 65 (D.C. Cir. 2015) (cleaned up).

Plaintiffs have based their calculation on current hourly rates to account for the fact that years will have passed between the performance of some of the work and the receipt of payment for the work performed. *See Missouri v. Jenkins*, 491 U.S. 274, 283-284 (1989) (accepting this method to account for delay in payment); Millian Decl., Pl. Ex. 1, para. 12 (request based upon the current hourly rates applicable to the experience level each attorney had at the time that the work was performed).

C. THE RESULTS OBTAINED AND ADDITIONAL FACTORS SUPPORT THE REASONABLENESS OF THE REQUESTED FEE

The reasonableness of the Parties' agreed-upon figure is further supported "in light of the results obtained." *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d at 87 (internal citations omitted). The Settlement Agreement is an extraordinarily strong result for Plaintiffs and

[3] The LSI *Laffey* Matrix rates are below current market rates for complex federal litigation. Millian Decl., Pl. Ex. 1, para. 13.

will provide substantial and lasting benefits to the Plaintiff Class. The Settlement Agreement is described further in the Parties' Joint Motion for Approval of the Settlement Agreement. *See* ECF No. 193. The systemic reforms in this agreement would not have been accomplished absent the skill, tenacity, and effective advocacy of Class Counsel, who investigated significant time and effort and litigated this case on a fully contingent basis.

III

PLAINTIFFS ARE ENTITLED TO AN AWARD OF REASONABLE LITIGATION EXPENSES

As explained above (pp. 1-2), the Parties' negotiated amount of $2,500,000 settles all of Plaintiffs' litigation costs, including out-of-pocket expenses, through the Expiration Date, except for certain enforcement motions. *See* ECF No. 191-1, paras. 151-152. To support this fee application, Plaintiffs submit Class Counsel's out-of-pocket litigation expenses directly related to the representation of the class from July 15, 2020 through December 31, 2022. *See* Millian Decl., Pl. Ex. 1, paras. 24-26. The summary of the litigation expenses is Plaintiffs' Exhibit 7, and the records of the expenses are set forth in Plaintiffs' Exhibit 6. These expenses are described in narrative form in Ms. Millian's declaration. Pl. Ex. 1, para. 26. The total amount of expenses incurred was $37,580.54. *See* Pl. Ex. 7.

Plaintiffs' expenses included out-of-pocket expenses for document production, Westlaw charges, expert costs for Plaintiffs' Correctional Special Education expert, Dr. Joseph Brojomohun-Gagnon, and Plaintiffs' Correctional Technology Expert, Eden Nelson. As explained in Ms. Millian's declaration, these categories are ordinarily billed to fee-paying clients in the Washington, DC market and, in this matter, would have been billed to Plaintiffs if they had been

paying fees. *See* Pl. Ex. 1, para. 24. All of the expenses included in this application was for work directly related to the representation of the class and, therefore, was reasonably expended.[4]

CONCLUSION

Plaintiffs' attorneys' fees and expenses for the work described above, after billing judgment reductions, are listed below:

Attorneys' Fees of Terris, Pravlik & Millian, LLP	$4,591,740.59
Attorneys' Fees of Washington Lawyers' Committee	$844,337.37
Attorneys' Fees of School Justice Project	$719,920.81
Expenses	$37,580.54
TOTAL	$6,193,579.31
Settlement Fees Total	**$2,500,00.00**

Plaintiffs would be entitled to an award of $6,193,579.31 for the time period of July 15, 2020 through December 31, 2022. However, the Parties have settled these fees and expenses and litigation costs that Class Counsel incurred and will continue to incur from January 1, 2023 through the Expiration Date of the Settlement Agreement for a total amount of $2,500,000. This negotiated figure is a significant reduction that further demonstrates the reasonableness of this fee request.

For the reasons set forth above, and based on the settlement of the Parties, Plaintiffs respectfully request an award of litigation costs in the amount of $2,500,000. A proposed order is attached.

[4] Documentation for the expenses is not attached. If the Court or a member of the Plaintiff Class wishes to examine additional documentation, we will promptly provide it.

Respectfully submitted,

/s/ Kathleen L. Millian

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